Supreme Court, U. S.
FILED
NOV 29 1974
MICHAEL RODAK, JR., CLERK

APPENDIX
(Vol. I — Page 1 to 516)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, et al,

Petitioners,

—*v*—

IRA SELDIN, et al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

Petition For Certiorari, Filed July 15, 1974
Certiorari, Granted October 15, 1974

SPAULDING LAW PRINTING CO., SYRACUSE, N. Y.

(S. 6937)

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DOCKET ENTRIES

January 24, 1972	Complaint Filed
April 6, 1972	Notice of Motion and supporting Affidavit to Dismiss Complaint Filed
May 2, 1972	Notice of Motion, Motion and supporting Affidavit of Rochester Home Builders Association, Inc. to Intervene as Party Plaintiff Filed
June 7, 1972	Plaintiffs' Notice of Motion and Motion for an Order making Housing Council in the Monroe County Area, Inc. a Party Plaintiff Filed
June 12, 1972	Plaintiffs' Affidavit of Robert J. Warth Filed
June 12, 1972	Plaintiffs' Affidavit of Andalino Ortiz Filed
June 12, 1972	Plaintiffs' Affidavit of Clara Broadnax Filed
June 12, 1972	Plaintiffs' Affidavit of Angela Reyes Filed
June 12, 1972	Plaintiffs' Affidavit of Rosa Sinkler Filed
June 12, 1972	Plaintiffs' Affidavit of Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris Filed

DOCKET ENTRIES

June 12, 1972 Plaintiffs' Affidavit of Ann McNabb Filed

June 12, 1972 Plaintiffs' Affidavit of Christian G. King, Alan J. Taddiken and Richard C. Farley Filed

December 29, 1972 Order dismissing Complaint, denying Plaintiffs' Motion to add as Party Plaintiff Housing Council in Monroe County Area, Inc. and denying Motion of Rochester Home Builders Association, Inc. to intervene Filed

January 24, 1973 Plaintiffs' Notice of Appeal Filed

January 26, 1973 Notice of Appeal of Rochester Home Builders Association, Inc. Filed

August 16, 1974 Opinion and certified copy of Second Circuit Court of Appeals Order affirming Order of District Court Filed

October 15, 1974 Petition For Certiorari Granted

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, 265 Castlebar Road, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
LYNN REICHERT, 224 Seneca Parkway, Rochester, New York 14613, Individually and on behalf of all other persons similarly situated,
VICTOR VINKEY, 134 Nunda Boulevard, Rochester, New York, 14610, Individually and on behalf of all other persons similarly situated,
KATHERINE HARRIS, 108 Garson Avenue, Rochester, New York, Individually and on behalf of all other persons similarly situated,
ANDELINO ORTIZ, R.D. 1 Wrights Road, Box 202, Wayland, New York, Individually and on behalf of all other persons similarly situated,
CLARA BROADNAX, 87 Jefferson Avenue, Rochester, New York, Individually and on behalf of all other persons similarly situated,
ANGELEA REYES 378

COMPLAINT

Scio Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Apartment 5-F, 10 Vienna Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC., 277 Goodman Street North, Rochester, New York,

Plaintiffs,

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of

the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK

Defendants.

Plaintiffs, above named, by their attorneys, Robinson, Williams, Robinson and Angeloff, as and for their complaint against the defendants, allege:

FIRST That this is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, and 1983 and pursuant to Title 28 USC 2201 and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title 28 USC 1331, 1343, and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes

of action herein contained.

SECOND: That now and at all times hereinafter mentioned, the plaintiffs, Vinkey, Reichert, Warth, Harris are and were citizens of the United States of America and of the State of New York and are and were residents of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of said state, and said plaintiffs are and were the owners of real property lying within the territorial limits of said municipality and they are and were taxpayers of said municipality being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of

their real estate lying within said municipal limits. In addition, the plaintiff Harris is a negro person who is denied certain rights by virtue of her race all as is more hereinafter set forth.

THIRD: Plaintiffs, property owners and taxpayers of the City of Rochester, are aggrieved in that they are paying a greater proportionate share of real estate taxes to the City of Rochester than are other residents of the Rochester metropolitan area to their respective towns because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the

exclusionary practices of defendants.

FOURTH: That now and at all times hereinafter mentioned, the plaintiff Ortiz is and was a citizen of the United States of America and of the State of New York and is and was a resident of Wayland, New York, and said Ortiz is and was the owner of real property lying within the territorial limits of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of the State, and he is and was a taxpayer of the municipality of Rochester, New York, being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of his real estate lying within said

municipal limits. In addition, plaintiff Ortiz as a citizen of Spanish/Puerto Rican extraction is denied certain rights by virtue of his race all as is more fully hereinafter set forth. Plaintiff Ortiz is employed in the Town of Penfield, New Yorkbut has been excluded from living near his employment as he would desire by virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield as more particularly set forth.

FIFTH: That now and at all times hereinafter mentioned, the plaintiffs Broadnax, Reyes and Sinkler are and were citizens of the United States of America and the State of New York and are and were residents of the City of Rochester, New York, and are persons fitting within the classification of low and moderate income as hereinafter defined who solely

by reason of their existing in said classification are and were deprived of certain rights as hereinafter set forth.

SIXTH: That now and at all times hereinafter mentioned, the plaintiff Metro-Act of Rochester, Inc. is and was a non-profit corporation organized pursuant to the laws of the State of New York with its principal office located in the City of Rochester, New York. Metro-Act of Rochester, Inc. is a non-profit corporation with its main purpose being to alert ordinary citizens to problems of social concern; one effort of the corporation has been to inquire into the reasons for the critical housing shortage for low and moderate income persons in the Rochester area and to urge action on the part of citizens to alleviate the general housing shortage for low and moderate

income persons.

SEVENTH: Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The classes which plaintiffs represent are composed of all taxpayers of the City of Rochester, all low and moderate income persons residing in the City of Rochester, all black and/or Puerto Rican/Spanish citizens residing in the City of Rochester and all persons employed but excluded from living in the Town of Penfield who are affected or may in the future be affected by the defendants' policies and practices complained of herein. Plaintiffs and the classes they represent have been and continue to be discriminated against because of their race and income level in ways

which deprive them of the right to residential housing, low and moderate income multiple unit housing, and land use opportunities equal to those enjoyed by residents of the Town of Penfield. These persons are so numerous that joinder of all parties is impracticable. A common relief is sought. The interests of the classes are adequately represented by plaintiffs. Defendants have acted or refused to act on grounds applicable to said classes.

EIGHTH: That now and at all times hereinafter mentioned, the defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the

Town Code of the Town of Penfield, New York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

NINTH: That now and at all times

hereinafter mentioned, the defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they participated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

TENTH: That now and at all times hereinafter set forth, the defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Dr. Donald Hare, Lindsey Embrey and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.

ELEVENTH: That now and at all times hereinafter mentioned, the defendant Town of Penfield is and was a municipal

corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying contiguous to the territorial boundaries of the City of Rochester, New York.

TWELFTH: That pursuant to state enabling legislation, the defendants Gossin, Pallischeck, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York, on the 5th day of May 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A and made a part hereof.

THIRTEENTH: That said ordinance,

both as enacted and/or as administered by the defendants afore named is violative of the Constitution of the United States and in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

FOURTEENTH: That the statute as enacted and/or administered by the defendants, has as its purpose and in fact, effects and propagates exclusionary zoning in said Town with respect to excluding moderate and low income multiple unit housing and further tends to exclude low income and moderate income and non-white residency in said Town and thereby deprives persons and has deprived persons

including the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler of the same right to inherit, purchase, lease, sell and/or convey real property and to make and enforce contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property as are enjoyed by persons presently living in said Town.

FIFTEENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custom and usage of the State and has subjected the plaintiffs and others similarly situated to be deprived of

certain rights, privileges and immunities secured by the Constitution and laws of the United States.

SIXTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and their predecessors in office have arbitrarily and capriciously and continuously, for a period of over fifteen (15) years last passed, administered the provisions of the said zoning ordinance by refusing to grant variances, building permits, and by use of special permit procedures and other devices so as to effect and propagate the exclusionary and discriminatory policy, plan and/or scheme afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan

Rochester area, including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity and growth of the metropolitan Rochester area and have thereby kept low and moderate income persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of said Town of Penfield. That as a result of the aforesaid, plaintiffs, Harris, Ortiz, Broadnax, Reyes and Sinkler and others similarly situated, have been unable to lease sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore

had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs, Harris, Ortiz, Broadnax, Reyes, and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00)

SEVENTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and the defendant Town have arbitrarily and capriciously and continuously for a period of over fifteen (15) last past enacted, administered and enforced the provisions of the ordinance as set forth above as Exhibit A and have failed to amend, modify, alter or waive the provisions of the same including the amending, waivering, altering and/or modifying the provisions of

the zoning map, the variance and set-back and minimum lot requirements, population density, use density, units per acre density, floor area and sewer requirements, traffic flow, ingress and egress and street location requirements so as to effect and propagate the exclusionary discriminatory policy, plans, and/or schemes afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity, and growth in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital requirements to purchase real estate) and non-White persons (most of whom statistically exist in the afore-

referred income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others;and as a result,the Plaintiffs,Harris, Ortiz, Broadnax,Reyes and Sinkler, individually

and/or collectively have been damaged and/ or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

EIGHTEENTH: That contrary to the Constitution and laws of the United States, as hereinabove and hereinafter set forth, the individual defendants and the defendant Town of Penfield have arbitrarily and capriciously and continuously and for a period of over fifteen (15) years last past, refused to grant necessary tax abatements and otherwise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with, assist, and accommodate applicants for low and moderate income multiple unit housing in the Town of Penfield, all in furtherance of a policy of exclusionary zoning as

afore stated regarded such housing and also as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity and density in the metropolitan Rochester area and they have thereby under color of law, ordinance, custom, usage kept low and moderate income class persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income category) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid

the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have there fore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

NINETEENTH: That the provisions of the zoning ordinance afore referred to and the enactment and administration

of the same by the named defendants and their predecessors in office under color of law, ordinance, custom and usage as hereinbefore and hereinafter set forth with regard to lot area, set backs, (including distances between units, front, rear and side set backs, and street set backs) population density, density of use, units per acre, floor area, sewer requirements, traffic flow, ingress and egress, street location, for low and moderate income multiple dwelling unit housing, are contrary to the law and Constitution of the United States in that they make practically and economically impossible the construction of sufficient numbers of low and moderate income multiple dwelling unit housing in the Town of Penfield to satisfy the minimum housing requirements of both the Town of

Penfield and the metropolitan Rochester area including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity, and density in the metropolitan Rochester area, and thereby kept and keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within the said Town of Penfield, and they have had

to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

TWENTIETH: That the provisions of the zoning ordinance afore referred to including the provisions relating to the zoning map and/or master plan and the enactment and administration of the same by the named defendants and their predecessors in office under color of law, ordinance, custom, and usage as hereinbefore and hereinafter stated, is contrary to

the law and Constitution of the United States in that it fails to allocate and designate sufficient land of good quality for the construction of low and moderate income multiple unit housing in the Town of Penfield to satisfy the minimum requirements and demands of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments, population and considering also population density, growth and fluidity in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from

residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars($10,000.00).

TWENTY-FIRST: That as a proximate

cause of all of the above, the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc., have been damaged in that they have paid and/or are paying greater and/or additional real estate taxes to the City of Rochester than they would have had the defendants not acted as alleged, because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the exclusionary practices of defendants, and as a result, the plaintiffs, Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc. individually and/or collectively have been damaged and/or

will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

TWENTY-THIRD: That by reason of all of the afore referred to, the aforestated ordinance, scheme, acts, actions and activities violate the Ninth Amendment in that this ordinance, scheme, acts, actions and activities are calculated to deny and in fact do deny and/or disparage, certain inalienable rights retained by citizens of the United States, including the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., and this ordinance, scheme, acts, actions and activities violate the Fourteenth Amendment to the United States Constitution and the plaintiffs' rights thereunder by denying plaintiffs Vinkey, Reichert, Warth,

Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc. due process of law and the equal protection thereof, and this ordinance, scheme, acts, actions and activities do further violate the First Amendment rights of the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., in that they are denied the right to peaceably assemble for the purpose of living within the geographical limits of the said Town of Penfield.

TWENTY-FOURTH: That there is no legal basis under the Constitution and laws of the United States for the ordinance afore referred to and the actions, activities plan and scheme afore related.

TWENTY-FIFTH: That by reason of all of the acts, actions and/or activities

on the part of the defendants and their predecessors in office hereinbefore and hereinafter set forth, the plaintiffs and others similarly situated have paid, are now paying, and will in the future be forced to pay greater taxes and/or sums of money and/or exactions and/or taxes based upon a higher rate of real estate assessment, than do other persons owning property and/or living in the metropolitan Rochester area, and the plaintiffs and others similarly situated have therefore been subjected to unlike and/or discriminatory taxes and/or exactions all as are in violation of their rights under 42 USC 1981.

WHEREFORE, plaintiffs ask this Court for a judgment and/or order:

A. Declaring the zoning ordinance of the Town of Penfield, including the

provisions relating to the zoning map and/or master plan, null and void as contrary to the statutory and constitutional law of the United States of America.

B. Enjoining the defendants and their successors in office from administering and/or enforcing said zoning act.

C. Compelling the defendants to enact and/or administer a non-exclusionary zoning ordinance repairing and/or alleviating the conditions and effects afore complained of.

D. Granting the plaintiffs, jointly and/or severally, damages actual and/or exemplary, in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

E. Assessing the damages incurred by the members of plaintiffs' class and granting money judgment for said sum.

F. Granting the plaintiffs such other and further relief as to the Court may seem just and proper.

/s/ Frank A. Aloi
ROBINSON, WILLIAMS,
ROBINSON AND ANGELOFF
Attorneys for Plaintiffs
Office and Post Office
Address
700 Reynolds Arcade
Building
Rochester, New York
14614
Tel.716-454-1990

Chapter 29

ZONING

APPELLATE DIV.
LIBRARY
JAN 20 1972
ROCHESTER, N. Y.

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§ 29-2. Purpose.
§ 29-3. Districts.
§ 29-4. Zoning Map.
§ 29-5. Interpretation.
§ 29-6. Definitions.
§ 29-7. Non-Conforming use.
§ 29-8. Residential "AA" District.
§ 29-9. Residential "A" District.
§ 29-10. Front Yards — Residential Districts.
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§ 29-11.20. Planned Unit Development District.
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§ 29-11.22. Planned Unit Development application procedure and zoning-approval process.
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§ 29-14. Industrial District.
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§ 29-16. Signs.
§ 29-17. Filling of land and dumping of waste material.
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§ 29-26. Amendments.
§ 29-27. Penalties.
§ 29-28. Repeal of existing ordinances.
§ 29-29. Effective date.

[HISTORY: Adopted, Penfield Town Board, 5-5-62; effective 5-12-62 as amendment of ordinance originally adopted 4-28-30 and amended 7-11-38 and 10-6-41. Subsequent amendments noted where applicable.]

§ 29-1. Title.

This ordinance shall be known as the "Amended Zoning Ordinance of the Town of Penfield."

§ 29-2. Purpose.

The purpose of this ordinance is to promote the health, safety, morals and general welfare of the Town of Penfield, by regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, court, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, all in accordance with a well considered plan for the development of said Town so as to conserve and stabilize land values and to protect the existing properties during the course of such development, and also to establish penalties for the violation of such regulations.

§ 29-3. Districts.

To carry out the foregoing purpose, the Town of Penfield is hereby divided into districts which shall be designated as follows:

Residential "AA"

Residential "A"

Apartment House or Multiple Dwelling District

Commerical

Trailer Park

Industrial

§ 29-4. Zoning Map.

The location and boundaries of the foregoing districts are hereby established as delineated on the Amended Zoning Map filed with the Town Clerk of the Town of Penfield and in the description of the boundaries thereof, filed therewith, and which said map is hereby made a part of this ordinance and declared to be the "Official Zoning Map of the Town of Penfield."

§ 29-5. Interpretation.

In this ordinance, if not inconsistent with the context, the singular may be taken for the plural and the plural for the singular, except as to the number of permitted structures; person may include more than one, an association, co-partnership or a corporation. If any section, paragraph, subdivision or provision of this ordinance shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision or provision adjudged invalid, and the rest of this ordinance shall remain valid and effective.

§ 29-6. Definitions.

Except where specifically defined herein, all words used in this ordinance shall carry their customary meanings. Words used in the present tense include the future and the plural includes the singular; the word "lot" includes the word "plat" or "parcel"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

1. ACCESSORY STRUCTURE OR USE. A subordinate use or structure customarily incident to and located upon the same lot occupied by the main use or structure.

2. APARTMENT HOUSE OR MULTIPLE DWELLING. A structure arranged or designed to be occupied by two or more families, two or more individuals or two or more groups of individuals, living independently of each other, exclusive of row dwellings. [Amended 1-4-65]
3. BILLBOARD. Any outdoor signs, advertising medium, structure or device which advertises, directs, or calls attention to any business, article, substance, service, or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing, natural object or structure of any kind on real property or upon the ground itself.
4. BOARDING HOUSE. A structure in which more than two persons are supplied with meals and/or lodging for hire.
5. BUILDING LINES. The lines which delineate the area on which a structure may be legally erected.
6. BUILDING OFFICIAL. The official designated by the Town Board of the Town of Penfield pursuant to the provisions of the "Building Code Administration and Lot Control Ordinance" to administer the provisions of that ordinance and of this zoning ordinance.
7. CLUB. Membership, social or recreational building, but excluding one, the chief activity of which is a service customarily carried on as a business.
8. CORNER LOT. A lot or portion of a lot at the junction of and abutting on two intersecting streets.
9. CUSTOMARY AGRICULTURAL OPERATIONS. The use of a parcel of land of five acres or more for gain in the raising of agricultural products, livestock, poultry, and dairy products. It includes necessary farm structures within the prescribed limitations and the storage of necessary equipment. It includes also the use of a parcel of land of less than five acres except that on such parcels, the raising of fur-bearing animals, livery or boarding stables, dog kennels and the raising of livestock and poultry for sale and slaughter is excluded and therefore prohibited.

10. DWELLINGS, ROW. A building consisting of a series of one-family sections having a common wall between adjacent sections.
11. FAMILY. Any number of individuals living together as a single housekeeping unit and preparing their food as one unit.
12. FRONT. The front of a lot shall be the line of the lot corresponding with or approximately parallel with and nearest to the street on which the lot faces as determined by the Town Assessment roll.
13. FRONT YARD. The required open space between the street or highway line and the front wall of the main structure including any attachments thereto with the exception only of cornices or entrance steps.
14. GARAGE ATTACHED. A private garage which is attached to or forms an integral part of the main structure on the lot.
15. GARAGE, PRIVATE. A structure used for the storage of motor vehicles owned or used by the occupants on the lot upon which it is erected for a purpose accessory to the legal use of the lot and with no provision for repairing or servicing such vehicles for profit.
16. GARAGE, PUBLIC. Any structure, not a private garage, designed or used for the repair or storage of motor vehicles.
17. GRADE. The average level of the finished surface of the ground adjacent to the exterior walls of the building.
18. HABITABLE AREA. That area of a building designed to be occupied by one or more persons for year-round living, sleeping, eating or cooking, exclusive of basements, garages and unheated breezeways or porches.
19. HEIGHT-BUILDING. The vertical distance measured from grade level to the highest level of a flat roof or to the

average height of a pitched, gabled, hip or gambrel roof, excluding bulkheads, penthouses, providing they are less than 12 feet in height and do not occupy more than 10% of the area of the roof upon which they are located.

20. LODGING HOUSE. A structure in which more than two persons are lodged for hire.

21. LOT. A parcel of land which is or may be occupied by a structure or use with accessories thereto, including the open spaces thereon but excluding any part thereof within the bounds of a highway.

22. NON-CONFORMING STRUCTURE OR USE. A structure or use of land legally existing at the time of the enactment of this ordinance which does not conform with the regulations set forth herein for the district in which it is situated.

23. PROFESSIONAL OFFICE. The office of a doctor, lawyer, dentist and person performing any activity or service licensed pursuant to the provisions of the Education Law of the State of New York.

24. REAR YARD. The required open unoccupied space, measured perpendicularly from the rear lot line to the nearest part of the main or accessory structure on the premises.

25. RESTAURANT. A permanent structure used for the serving of meals with table or counter and chair facilities, exclusive of hot dog stands or soft drink establishments.

26. SIDE YARD. The open unoccupied space measured perpendicularly from the side lot lines to the nearest part of the main or accessory structure on the premises.

27. STREET OR HIGHWAY LINE. The line which is the joint boundary line between a lot and a street or highway right-of-way.

28. STORY. The portion of a building which is between one floor level and the next higher floor level or the roof. If a Mezzanine floor area exceeds one-third (⅓) of the area of the floor immediately below, it shall be deemed to be a story.

A basement shall be deemed to be a story when its ceiling is six (6) or more feet above the finished grade. A cellar shall not be deemed to be a story if unfinished and without human occupancy.

29. STORIES, NUMBER OF

(a) ONE-STORY BUILDING, may consist of a basement and one floor providing the basement ceiling is less than six (6) feet above grade.

(b) TWO-STORY BUILDING, may consist of a basement, first and second floor providing the basement is less than six (6) feet above grade.

(c) ONE-AND-ONE-HALF STORY BUILDING, may consist of a basement, first and second floor, providing the distance from the second floor to the mean of the roof does not exceed seven (7) feet and the basement ceiling is less than six (6) feet above grade.

30. STRUCTURALLY ALTERED. Any alteration whereby a structure is adapted to another or different use and to any alteration or repair which would violate any of the regulations herein.

31. STRUCTURE. A building or anything constructed or erected which requires temporary or permanent location on or the support of the soil, or which is attached to any structure, exclusive, however, of portable or self-propelled equipment.

32. USE. The purpose for which any structure or any part thereof and the premises or any part thereof is occupied or intended to be occupied, or if either is unoccupied, the purpose for which they may be occupied.

33. PRIVATE SWIMMING POOL. Any artificial pool of water constructed or maintained outdoors for the purpose of providing swimming or bath facilities for a private family and invited guests, in excess of two hundred (200) square feet of horizontal area or over twenty (20) inches in depth, shall constitute a private swimming pool. [Added 9-6-66, amended 9-5-67]

34. GROUP SWIMMING POOL. Any artificial pool of water constructed outdoors or indoors for the purpose of providing swimming or bathing facilities for more than one private family and invited guests, shall constitute a group swimming pool. [Added 9-6-66]

35. MOTOR VEHICLE SUPPLY STATION. A structure designated or used:

(1) For the sale to the public of auto accessories and tires, oil, gasoline and other petroleum products customarily used in the operation of an automobile;

(2) For the making of minor repairs, tune-ups, lubrication, and tire changes of automotive vehicles.

The term does not include the making of major engine repairs, body repairs, painting or dismantling of vehicles or storage of disabled vehicles. [Added 7-5-67]

(The next page is 2909)

§ 29-7. Non-Conforming use.

Any lawful use existing at the time of the passage of this Ordinance may be continued though not conforming to the regulations of the district in which it is maintained subject to the following regulations:

a. Structural alterations shall not exceed 50% of assessed valuation.

b. Enlargement of the structure is prohibited without change to a conforming use.

c. Such use may only be continued on the premises and in the structure where it exists at the time of the adoption hereof.

d. Any structure destroyed by fire or other calamity may be restored within twelve (12) months of such destruction and the former use continued provided that the reconstruction shall not exceed the dimensions of the destroyed property.

e. No change may be made in the non-conforming use. The right to continue such non-conforming use shall immediately cease upon any such change unless such change has been approved by the Zoning Board of Appeals.

f. The failure to exercise any non-conforming use for a period of one year or more shall terminate such non-conforming use of the structure or premises, and thereafter such structure or premises shall be used only in conformity with the provisions of this ordinance.

g. At any time after the effective date of this ordinance, upon the written request of the user of any structure or premises, or at the instance of the Building Official, a survey of any existing legal use shall be made by said Official. Such survey shall thereafter be filed with the Zoning Board of Appeals who shall thereafter recommend to the Town Board the issuance by it of a Certificate of Existing Use

which shall clearly delineate the premises and structure referred to and shall specify the nature and extent of such existing use. Such Certificate shall be prepared in triplicate, one copy of which shall be filed with the Town Clerk; one copy furnished the Zoning Board of Appeals and one copy served personally upon the owner or user. If such user be not satisfied with the certificate as issued, he may, within thirty (30) days of the receipt thereof, request a review of such decision by the Town Board who shall hear and consider said review. Following such consideration, said Town Board may affirm, modify, enlarge or void such certificate and shall thereupon cause to be issued a final Certificate of Existing Use in conformity with its decision. If no such review is requested by the user or if no proceedings are taken as provided by law to review the decision of the Town Board, the Certificate, as the case may be, shall be and become binding and conclusive upon the user or upon any person or persons claiming in his right as to the application of any provision of this Ordinance or in any action or proceeding instituted hereunder, upon the expiration of thirty (30) days from the receipt of such Certificate or amended Certificate by such user. The fee for the issuance of any Certificate when issued at the request of the user of any structure or premises shall be twenty-five dollars ($25.00).

§ 28-8. Residential AA District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "AA" District except for one or more of the following purposes:

1. One family dwelling.
2. Churches and similar places of worship.
3. Elementary, high schools, colleges, universities, public parks and public playgrounds.

4. Boarders and lodgers not to exceed two (2) in a one (1) family dwelling.
5. Customary agricultural operations, as the same are herein defined, but excluding within one hundred (100) feet of any lot line, any housing of poultry or stabling of livestock or storage of manure or other odor or dust producting material.
6. Public library.
7. Municipal buildings or structures (including Town, school and improvement or fire district).

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "AA" District when located on the same lot with a permitted principal use.

1. Private garage, either attached or unattached to the principal structure.
2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. AREA OF STRUCTURES. No one story residential structure shall be hereafter erected unless it shall contain an habitable area, exclusive of open porch or attached garage, of not less than 1,300 square feet; no one and one half story residence or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,400 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,500 square feet.

d. MINIMUM SIZE LOTS. No structure shall be erected on a lot other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty thousand (20,000) square fee. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty five thousand (25,000) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary, where needed, for adequate and sufficient individual sewage disposal and/or the safe location of a potable water well, where needed.

e. YARDS. No church, school or other permitted structure designed for public assembly or open to the public, hereafter erected, structurally altered, reconstructed or moved in a Residential "AA" District shall be nearer to any street line than 100 feet, whether front or side and no such structure shall be nearer than 100 feet to any interior or rear lot line. Every other permitted structure hereafter erected, structurally altered, reconstructed or moved in such District shall be no nearer to any street line, whether front or side, than is provided under the provisions of § 29-10 of this Ordinance and no such structure shall be nearer than ten (10) feet to any interior side or rear lot line. The purpose of this provision is to establish suitable side and rear yards.

§ 23.9 Residential "A" District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land, or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "A" District except for one or more of the following purposes:

1. All uses permitted in a Residential "AA" District, subject to all the use restrictions specified therefore in the provisions relating to said district.

2. Lodging or boarding houses, where no more than four persons are supplied with meals and/or lodging for hire. [Amended 1-4-65]*

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "A" District when located on the same lot with a permitted principle use.

1. Private garage, either attached or unattached to the principle structure.

2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. AREA OF STRUCTURES. No one story resident structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,000 square feet; no story and a half or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,200 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,300 square feet.** [Amended 1-4-65]

* Editor's Note: Amendment repealed 2. and renumbered this subsection from 3.
** Editor's Note: Eliminated last sentence which referred to size requirements.

d. MINIMUM SIZE LOTS. No structure shall be erected on other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than fifteen thousand (15,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than eighteen thousand seven hundred and fifty (18,750) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any legally existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary for adequate and sufficient individual sewage disposal, and the safe location of a potable water well, where needed.

e. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Residential "A" District, shall be nearer to any street line, whether front or side, or to any interior or rear lot line than is provided under the provisions of § 29-8, paragraph e., of this ordinance.

§ 29-10. Front yards — Residential Districts.

For the purpose of establishing suitable front yards, no structure hereafter erected, structurally altered, reconstructed or moved in any Residential District, shall be nearer to the center line of any highway than herein provided:

1. 108 feet from the center line of the highway of the following streets and highways:

Atlantic Avenue
Browneroft Boulevard
Carter Road
Fairport-Nine Mile Point Road
Five Mile Line Road
Penfield Road
Plank Road
Salt Road

2. [Added 8-3-64]. Ninety (90) feet from the center line of the highway of the following streets and highways:

Baird Road, south of Penfield Road
Bay Road
Creek Street
Huber Road
Harris Road
Jackson Road
State Road
Watson Road
Whalen Road

3. [Added 8-3-64]. Eighty-three (83) feet from the center line of the highway of any street or highway not hereinabove specifically set forth.

4. [Added 8-3-64]. Nothing in the foregoing shall prohibit the construction of an addition to a lawfully existing residence, provided that such addition shall not be constructed nearer the center line of the highway than the existing residence, and provided that such addition shall not be in violation of any side- or rear-line setback requirement imposed by this ordinance.

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§ 29-11. Apartment House or Multiple Dwelling District.

A. USES. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as an Apartment-House or Multiple-Dwelling District, except for apartment houses and multiple dwellings as defined in § 29-6, Paragraph 2 of this ordinance and such accessory structures as are customarily incident to and used in connection with such main structure.

B. AREA OF STRUCTURES: No apartment house or multiple dwelling, as herein defined, shall be hereafter erected, or existing structure altered or reconstructed to become such, unless each unit thereof shall contain the following minimum habitable area:

Studio apartment (no bedroom)	500 square feet
One-bedroom apartment	600 square feet
Two-bedroom apartment	800 square feet
Three-bedroom apartment	950 square feet

C. MINIMUM LOT SIZE: [Amended 9-7-65] Every lot in said district shall contain a minimum of three thousand five hundred (3,500) square feet for each apartment living unit to be erected thereon, shall be of such size that the horizontal area of any structure or group of structures to be erected, or as it or they shall exist after alteration or remodeling, shall not occupy more than twenty-five per centum (25%) of the area of the lot. The horizontal area shall be the area determined by projecting the extreme lines of the structure vertically to a horizontal plane. The horizontal area of a group of structures located on the same lot shall be the combined areas of all buildings comprising the group.

D. YARDS: No structure hereafter erected, structurally altered, reconstructed or moved in said district shall be nearer

to any street line than the height of the building or buildings, and in no event nearer than eighty (80) feet. No structure not in excess of three (3) stories in height shall be nearer than twenty (20) feet to any interior side or rear lot line. No structure from four (4) to six (6) stories in height, inclusive, shall be nearer than thirty (30) feet to any interior side or rear lot line, and no structure seven (7) stories or more in height shall be nearer than forty (40) feet to any interior side or rear lot line. Where the rear or side lot line abuts any lot or land area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjoining said residential district, and a fifty-foot strip immediately adjoining said residential district shall be maintained as a landscape buffer area. [Amended 8-3-64]

E. Off-street parking. All premises occupied by apartment houses or multiple dwellings in this district shall provide and maintain at the site of such structures and completely off the limit of any street or highway an improved and usable parking area of sufficient size to provide one and one-half (1½) parking spaces for each apartment or living unit to be contained in such structure, of which requirement one (1) such parking space per apartment or living unit shall be within an enclosed garage. All unenclosed parking areas shall be screened from adjacent properties.

§ 29-11.1. Townhouse Dwelling District. [Added 6-2-69]

A. Definition. Townhouses are defined as buildings or dwelling groups containing individual single-family units permitting separation of such family groups by a party wall. [Amended 8-7-72, effective 8-28-72]

B. Uses. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as a Townhouse Dwelling District, except for townhouses as herein defined and such accessory structures as are herein enumerated.

C. Townhouses. No townhouse or clusters of townhouses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

C. TOWN HOUSES. No town house or clusters of town houses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

1. DENSITY LIMITATION. The overall density shall not exceed nine (9) dwelling units per acre.

2. AREA REQUIREMENTS.

a) Lot size. No dwelling shall be erected on a parcel of land that has less than twenty (20) feet frontage.

b) Front yards (setbacks). No building or part thereof shall be erected or altered in this district that is nearer the private street center line upon which it fronts than forty-five (45) feet.
No building or part thereof shall be erected or altered in this district that is nearer than sixty (60) feet to the center line of a public or dedicated road upon which it fronts.
If any building erected in this district faces a public or dedicated road the opposite side of which is either AA or A Residential District, the front yard setback shall be that which is required by the Residential District.

c) Side yard setbacks. A side yard setback of thirty-five (35) feet is required from the center line of a private road on each corner lot; sixty (60) feet from the center line of a public road or dedicated road. No side yards shall be required of interior lots having a common wall. A side yard setback of at least equal to the height of the highest adjacent building and no less than twenty (20) feet shall be required between building groups.

d) Rear setback. A setback of at least thirty (30) feet from any other structure or any external boundary line is required on each lot.

3. HEIGHT LIMITATIONS. No building shall exceed two and one-half (2½) stories nor shall any building exceed thirty-five (35) feet in height, except for permitted accessory structures as approved by the Planning Board as hereinafter provided.

4. PARKING REQUIREMENTS. A minimum of two (2) parking spaces shall be provided for each dwelling unit, one (1) of which shall be completely enclosed and covered.

5. SPECIFIC REQUIREMENTS.

a) Unit size. No town-house-dwelling unit shall be constructed, altered or reconstructed unless it shall contain a minimum of one thousand two hundred (1,200) square feet of habitable area and be not less than twenty (20) feet in width.

b) There shall be no more than eight (8) individual town-house units within each building or dwelling group.

c) The main structures and all accessory buildings shall not occupy more than twenty-seven percent (27%) of the gross acreage as shown on site plan.

6. PERMITTED ACCESSORY STRUCTURES AND USES. The following accessory uses and structures are permitted subject to the approval of the Planning Board of the site plan and as hereinafter provided:

a) Private garages.

b) Group swimming pools, subject to provisions of § 29-20.1 of this ordinance, except that any pool proposed as an integral part of a town-house pro-

ject may be approved and a permit issued by the Planning Board as a part of its site-plan approval.

c) Parks, playgrounds and play areas to include structural facilities incidental to recreational areas, such as rest rooms, bathhouses and clubhouses, which facilities are limited to those that are publicly owned or operated not for profit for the benefit of the town-house owners of the district or a part thereof.

d) Maintenance buildings.

7. SITE-PLAN REQUIREMENTS. The site plan submitted for review, pursuant to § 29-15, Paragraph 11, of this ordinance, shall include the following items:

a) Topography, including existing and proposed contours.

b) Proposed street system for both public and private streets.

c) Proposed reservation for parks, playgrounds, recreational areas and other open spaces.

d) Off-street parking spaces.

e) Types of dwellings and portions of the area proposed therefor.

f) Locations of all structures and parking spaces, including number of parking spaces.

g) A tabulation of the total number of acres in the proposed project and a percentage thereof designated for the proposed dwelling types, and total ground coverage.

h) A tabulation of overall density per gross acres.

i) Preliminary plans and elevations of the several dwelling types.

j) Location and size of driveways.

k) Type and location, size and number of all plantings.

l) All grassed areas.

m) All sidewalk areas.

n) Type and size of fences or hedges.

o) Design of the proposed buildings including types of finishes on exteriors.

p) Provisions for disposal of rubbish.

q) Location of all buildings on site to include distance from lot lines.

r) Location and sizes of signs, if any.

s) Exterior lighting, if any.

§ 29-11.20. Planned Unit Development District.
[Added 6-1-70; effective 6-21-70]

A. Intent. It is the intent of the Planned Unit Development (PUD) Article (§§ 29-11.20 through 29-11.25) to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale neighborhoods or portions thereof may be developed within the town that incorporate a variety of residential types and nonresidential uses, and contain both individual building sites and common property which are planned and developed as a unit. Such a planned unit is to be designed and organized so as to be capable of satisfactory use and operation as a separate entity without necessarily needing the participation of other building sites or other common property in order to function as a neighborhood. This Article specifically encourages inno-

vations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more efficient use of land in such developments.

This Article recognizes that the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, but that PUD techniques for land development may be more appropriate in areas of the town that are not already substantially developed. This Article recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of the PUD concept. Thus, where PUD techniques are deemed appropriate through the rezoning of land to a PUD District by the Town Board, the set of use and dimensional specifications elsewhere in this ordinance is herein replaced by approval process in which an approved plan becomes the basis for continuing land-use controls. Consequently, where the provisions of §§ 29-3, 29-8, 29-9, 29-10, 29-11, 29-11.1, 29-12, 29-15, 29-20 and 29-20.1 of the amended Zoning Ordinance are inconsistent with the provisions of this section, the provisions of this section shall prevail.

B. Objectives. In order to carry out the intent of this Article, a PUD shall achieve the following objectives:

(1) A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential town residents at all economic levels.

(2) More usable open space and recreation areas.

(3) More convenience in location of accessory commercial and service areas.

(4) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.

(5) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.

(6) An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.

(7) A development pattern in harmony with the objectives of the Master Plan.

(8) A more desirable environment than would be possible through the strict application of other Articles of this ordinance.

§ 29-11.21. General requirements for Planned Unit Developments. [Added 6-1-70; effective 6-21-70]

A. Minimum area. Under normal circumstances, the minimum area required to qualify for a PUD District shall be one hundred (100) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.

B. Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation, or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the Approved Plan shall be binding on all owners.

C. Location of PUD District. The PUD District shall be applicable to any area of the town where the applicant can

demonstrate that the characteristics of his holdings will meet the objectives of this Article.

D. Permitted uses. All uses within an area designated as a PUD District are determined by the provisions of this section and the approved plan of the project concerned.

(1) Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this Article. To insure a variety of types of residences, to prevent overcrowding, to encourage adequate light and air space for fire protection, the following criteria shall be met:

(a) A minimum of ten percent (10%) by acreage shall contain single-family detached dwellings having the following minimum square feet of habitable area exclusive of open porch or attached garage:

1	story	1,300 square feet
1½	story	1,400 square feet
2	story	1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance.

Average density shall not exceed two (2) dwelling units per acre.

(b) A minimum of fourteen percent (14%) by acreage shall contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	1,000 - 1,300 square feet
1½	story	1,200 - 1,400 square feet
2	story	1,300 - 1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance. Average density shall not exceed three (3) dwelling units per acre.

(c) A minimum of seven percent (7%) by acreage shall contain single-family detached or double homes for sale.

Single-family detached homes shall have the following square feet of habitable area exclusive of open porch or attached garage:

1	story	800 - 900 square feet
1½	story	1,000 - 1,100 square feet
2	story	1,100 - 1,200 square feet

Double homes for sale shall have a minimum habitable area of nine hundred (900) square feet per dwelling unit.

Side and rear setbacks under this subsection shall conform to § 29-8 of this ordinar.. Average density shall not exceed four (4) dwelling units per acre.

(d) A maximum of thirty percent (30%) by acreage may contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	850 - 1,000 square feet
1½	story	1,050 - 1,200 square feet
2	story	1,150 - 1,300 square feet

No structure hereon shall be nearer than eight (8) feet to any interior side or rear lot line. Average density shall not exceed three (3) dwelling units per acre.

(e) A maximum of twenty-seven percent (27%) by acreage may contain multiple dwellings.

The habitable area of dwelling units shall conform to the requirements of Paragraph B of § 29-11 of this ordinance.

The horizontal area of all structures including garages shall not occupy more than twenty percent (20%) of the land area allocated to the multiple dwelling portion of the PUD.

Each dwelling unit shall have two (2) adequate parking spaces, one (1) of which shall be within an enclosed garage.

Average density shall not exceed nine (9) dwelling units per acre for town houses and twelve (12) dwelling units per acre for apartments.

The setback for structures from any street shall be as prescribed in Subparagraph (f) herein.

There shall be a distance between multiple-dwelling buildings not less than the height of the tallest building.

(f) Front setbacks shall be based on the function of the streets. For state and county highways or major town roads, no building unit shall be closer than one hundred (100) feet from the highway line; for internal subdivision streets that function as collectors and feeders to major roads, no building unit shall be closer than fifty (50) from the street line; and on purely internal streets, no building unit shall be closer than thirty (30) feet from the street line.

(g) In all residential areas, the acreage allocated to the various types of residential uses shall include all streets and highways therein, including one-half (½) the width of any abutting street or highway.

(2) Accessory commercial and service uses. For those developments in excess of one hundred (100) acres, commercial and service uses, not to exceed two percent (2%) of the total acreage, may be permitted where such uses are scaled primarily to serve the residents of the PUD.

(3) Customary accessory or associated uses, such as private garages, storage spaces, recreational and community activities, churches and schools, shall also be permitted or required as appropriate to the PUD.

(4) A minimum of ten percent (10%) by acreage shall be set aside for recreational use. Such land must be usable for recreation, such as, but not limited to: picnic areas, playgrounds, hiking trails, ball parks and community centers, and shall be in addition to other open space consisting of areas unsuitable for any use and which by its nature must be left in its natural state for conservation purposes.

E. Common property in the PUD. Common property in a PUD is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.

§ 29-11.22. Planned Unit Development application procedure and zoning-approval process.
[Added 6-1-70; effective 6-21-70]

A. General. Whenever any PUD is proposed, before any permit for the erection of a permanent building in such PUD

shall be granted, and before any subdivision plat of any party thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with the following procedures:

B. Application for sketch plan approval.

(1) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing; and it shall clearly show the following information:

(a) The location of the various uses and their areas in acres.

(b) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.

(c) Delineation of the various residential areas indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, town house, garden apartments, high-rise) and general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each such area.

(d) The interior open-space system.

(e) The overall drainage system.

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(f) If grades exceed three percent (3%), or portions of the site have a moderate to high susceptibility to erosion, or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided, along with an overlay outlining the above susceptible soil areas, if any.

(g) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.

(h) General description of the provision of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.

(i) A location map showing uses and ownership of abutting lands.

(2) In addition, the following documentation shall accompany the sketch plan:

(a) Evidence of how the developer's particular mix of land uses meets existing community demands.

(b) Evidence that the proposal is compatible with the goals of the official Master Plan.

(c) General statement as to how common open space is to be owned and maintained.

(d) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project.

(e) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.

(3) The Planning Board shall review the sketch plan and its related documents, and shall render either a favorable report to the Town Board or an unfavorable report to the applicant. The Planning Board may call upon the County Planning Council, the Soil Conservation Service, and any other public or private consultants that they feel are necessary to provide a sound review of the proposal.

(a) A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PUD districting. It shall be based on the following findings which shall be included as part of the report:

[1] The proposal conforms to the Master Plan.

[2] The proposal meets the intent and objectives of PUD as expressed in § 29-11.20.

[3] The proposal meets all the general requirements of § 29-11.21.

[4] The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land use configuration, open-space system, drainage system and scale of the elements, both absolutely and to one another.

[5] There are adequate services and utilities available or proposed to be made available in the construction of the development.

(b) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PUD districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

(4) The Chairman of the Planning Board shall certify when all of necessary application material has been presented, and the Planning Board shall submit its report within sixty (60) days of such certification. If no report has been rendered after sixty (60) days, the applicant may proceed as if a favorable report were given to the Town Board.

C. Application for PUD districting.

(1) Upon receipt of a favorable report from the Planning Board, or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date and conduct a public hearing for the purpose of considering PUD districting for the applicant's plan, in accordance with the procedures established under §§ 264 and 265 of the Town Law or other applicable law, said public hearing to be conducted within forty-five (45) days of the receipt of the favorable report or the decision of an appeal from an unfavorable report.

(2) The Town Board shall refer the application to the County Planning Council for its analysis and recommendations, and the Town Board shall also refer the application to the Town Engineer for his review.

(a) The Town Board shall give the County Planning Council at least thirty (30) days to render its

report, and within forty-five (45) days after the public hearing, the Town Board shall render its decision on the application.

(b) The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral duly noting the feasibility and adequacy of those design elements under his sphere of interest. This report need only concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later site-plan review stage. The Town Engineer may also state in his report any other conditions or problems that must be overcome before consideration of acceptance on his part.

D. Zoning for Planned Unit Developments.

(1) If the Town Board grants the PUD districting, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land-use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, fire houses and libraries, protection of natural and/ or historic sites, and other such physical or social demands.

(2) PUD districting shall be conditioned upon the following:

(a) Securing of final site-plan approval in accordance with the procedures set forth in § 29-11.23.

(b) Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the PUD District.

§ 29-11.23. Site plan approval process for Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Application for preliminary site plan approval. Application for preliminary site plan approval shall be to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or lanseape architect:

(1) An area map showing applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivision, streets and easements within five hundred (500) feet of applicant's property

(2) A topographic map showing contour intervals of not more than one (1) foot of elevation shall be provided.

(3) A preliminary site plan including the following information:

(a) Title of drawing, including name and address of applicant.

(b) North point, scale and date.

(c) Boundaries of the property plotted to scale.

(d) Existing watercourses.

(e) A site plan showing location, proposed use and height of all buildings; location of all parking and truck-loading areas, with access and egress drives thereto; location and proposed develop-

ment of all open spaces including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for nonresidential uses, if any.

(4) A tracing overlay showing all soil areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.

B. Factors for consideration. The Planning Board's review of a preliminary site plan shall include, but is not limited to, the following considerations:

(1) Adequacy and arrangement of vehicular-traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.

(2) Adequacy and arrangement of pedestrian-traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.

(3) Location, arrangement, appearance and sufficiency of off-street parking and loading.

(4) Location, arrangement, size and design of buildings, lighting and signs.

(5) Relationship of the various uses to one another and their scale.

(6) Adequacy, type and arrangement of tree, shrubs and other landscaping constituting a visual and/or a noise-deterring buffer between adjacent uses and adjoining lands.

(7) In the case of apartment houses or multiple dwellings, the adequacy of usable open space for playgrounds and informal recreation.

(8) Adequacy of storm water and sanitary waste-disposal facilities.

(9) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.

(10) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.

(11) Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.

In its review the Planning Board may consult with the Town Engineer and other town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that exterior design of all structures be made by, or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

C. Action on preliminary site plan application. Within ninety (90) days of the receipt of the application for preliminary

site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the preliminary site plan shall be considered conditionally approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.

The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, of which conformance with shall be considered a condition of approval. Such recommendations shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas, and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.

If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such case, the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.

No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion, or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of the Zoning Ordinance and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.

D. Request for changes in sketch plan. If in the site plan development it becomes apparent that certain elements of

the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan, in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved sketch plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

E. Application for final detailed site plan approval. After receiving conditional approval from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval; except that if more than twelve (12) months have elapsed between the time of the Planning Board's report on the preliminay site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the prelim-

inary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

F. Action on the final detailed site plan application. Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final plan shall be considered approved.

(1) Upon approving an application, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Building Inspector, who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements.

(2) Upon disapproving an application, the Planning Board shall so inform the Building Inspector. The Planning Board shall also notify the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

G. Staging. If the applicant wishes to stage his development, and he has so indicated, then he may submit only those stages he wishes to develop for site plan approval, in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged, and a staging plan must be developed. At no point in the development of a PUD shall the ratio of nonresidential to residential acreage or the dwelling unit ratios between the several different housing types for that portion of the PUD completed and/or under construction differ from that of the PUD as a whole by more than twenty percent (20%).

§ 29-11.24. Other regulations applicable to Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Regulation after initial construction and occupancy. For the purpose of regulating and development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in PUD Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance.

B. Site-plan review. Site-plan review under the provisions of this Article shall suffice for Planning Board review of subdivision under town subdivision regulations, subject to the following conditions:

(1) The developer shall prepare sets of subdivision plats suitable for filing with the office of the Monroe County Clerk in addition to those drawings required above.

(2) The developer shall plat the entire development as a subdivision; however, PUD's being developed in stages may be platted and filed in the same stages.

(3) Final site-plan approval under § 29-11.23F shall constitute final plat approval under the town subdivision regulations, and provisions of § 276 of the Town Law requiring that the plat be filed with the Monroe County Clerk within ninety (90) days of approval shall apply.

§ 29-11.25. Financial responsibility for construction in Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

No building permits shall be issued for construction within a PUD District until improvements are installed or performance bond posted in accordance with the same procedures as provided for in § 277 of the Town Law relating to subdivisions. The Town Board may require other proof of financial responsibility of the developer so as to insure completion of each phase of any development.

§ 29-11.30. Multiple dwellings for the elderly.
[Added 7-6-71, effective 8-1-71]

The Town Board may, on special application, issue a permit for the construction and maintenance of multiple dwellings for the elderly, as hereinafter defined, in any district of the town except Residential "AA" District.

A. "Multiple dwelling for the elderly" is defined as a building or a group of buildings whose primary purpose is to house one (1) or more persons of the age of sixty (60) years or more in independent living accommodations, but not including independent kitchen and dining facilities. Central kitchen and dining facilities to permit the congregate feeding of the residents are a required part of the concept. The following accessory facilities may be included within the structure or structures: Hobby shop, game rooms, library, meeting rooms, health center.

B. No such permit shall be issued until the application has been referred to the Planning Board for a recommendation. Prior to recommending the issuance of such permit, the Planning Board shall find after public notice and hearing that:

(1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

(2) The proposed use would not endanger or tend to endanger public health, safety, morals or general welfare of the community. In making such determination, the Board shall consider: lot areas; necessity for and size of buffer zones; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the availability of public sewers; the nature and use of other premises and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property.

(3) The proposed use will be in harmony with the probable future development of the neighborhood and will not discourage the appropriate development and use of adjacent lands and buildings or impair the value thereof.

C. After receiving the recommendation of the Planning Board, the Town Board may grant such a permit, or refuse to grant the same, as hereinafter provided:

(1) If the Planning Board has recommended the granting of the permit, the Town Board may grant the same forthwith.

(2) If the Planning Board has recommended the denial of the permit, the Town Board may deny the same forthwith.

(3) If the Planning Board has recommended the granting of the permit, the Town Board may deny the same after public notice and hearing.

(4) If the Planning Board has recommended the denial of the permit, the Town Board may grant the same after public notice and hearing, and after making the findings provided in Paragraph B of this section.

D. In granting such a permit the Town Board may attach such conditions and limitations as it considers desirable in order to assure compliance with the application and the purposes of this ordinance.

E. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

F. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon a proper resolution by the Town Board and the payment of a fee of one hundred dollars ($100.) and shall issue a renewal annually thereafter in January of each year upon payment of a like fee.

§ 29-12. Commercial districts.

A. USES: No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any commercial district designated as such on the Official Zoning Map of the Town of Penfield, except for one (1) or more of the following purposes:

1. Any use permitted in any residential district, subject to all of the provisions applicable to such use in such district, unless specifically modified herein.

2. Billiard hall, bowling alley, dance hall, pool hall and theatre; provided that:

   (a) If the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.

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3. Boat sales and service.
4. Bus passenger station.
5. Cemetery or burial ground by special permit of the Town Board.
6. Commercial parking areas.
7. Convalescent or nursing home.
8. "Drive In" restaurants and dairy bars, where persons are served in automobiles; provided that the nearest point of the property is not less than two hundred (200) feet from the boundary of any residential district.
9. Dry cleaning and laundry collection stations.
10. Hospital.
11. Hotel and Motel.
12. Institutions.
    a) Charitable
    b) Educational
    c) Financial
    d) Religious
    e) Fraternal
    f) Social
13. Laundry, dry cleaning and dyeing establishments (including coin-operated) provided that no more than five (5) persons are employed on the premises in laundry, dry cleaning and dyeing process or combination thereof.
14. Medical clinic.
15. Monument works may be permitted only when adjacent to a cemetery.
16. Mortuary or Undertaking parlors.
17. Offices.
    a) Business
    b) Insurance

    c) Professional
    d) Real Estate
18. Public parking garage.
19. Restaurant, grill, bar, cafe, cocktail lounge and night club, including dancing and entertainment, provided that if the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.
20. Sanitarium.
21. Schools (business or commercial), provided machinery used for instructional purposes is not objectionable due to noises, fumes, dust, smoke, odor or vibration.
22. Shops.
    a) Antique.
    b) Art.
    c) Artists' supply.
    d) Bakery or pastry (employing not more than five (5) persons in production).
    e) Barber, beauty and personal service.
    f) Bicycle (sale and repair).
    g) Book.
    h) Farm implements (sale and repair).
    i) Florist.
    j) Gift.
    k) Heating, plumbing, air conditioning and electrical.
    l) Luggage.
    m) Motor vehicle (sale and repair).
    n) Printing and publishing.

o) Shoe repair.

p) Tailor (employing not more than five (5) persons in production.

q) Tire and battery (exclusive of rebuilding operations).

23. Stores.

a) Appliance (employing not more than five (5) persons in repair or servicing).

b) Athletic and sporting goods.

c) Business machines.

d) Clothing and clothing accessories.

e) Confectionery and soda fountain.

f) Delicatessen.

g) Drug.

h) Dry goods.

i) Furniture (employing not more than five (5) persons in repair or servicing).

j) Grocery or meat market.

k) Hardware.

l) Jewelry.

m) Farm, garden and nursery supply stores.

n) Leather goods.

o) Liquor (package).

p) Music, radio and television stores and repair. There shall be no loudspeakers on the streets.

q) Notions.

r) Optician and Optometrist.

s) Photographic (equipment and supply).

t) Shoe.

u) Stationery.

v) Variety.

24. Studios.

a) Artist, dance and music (for instruction only).

b) Photography.

25. Other uses which, after a public hearing, the Board of Appeals shall find are of the same general character as those listed above and which will not be detrimental to the district in which they are to be located.

B. MINIMUM SIZE LOTS. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in a Commercial District unless such lot shall conform to the following requirements:

a) If said lot is to be used for residential purposes, it shall have a width, average depth and total ground area of a permissible lot in a Residential "A" District.

b) If said lot is to be used for a business purpose and a sanitary sewer is available, it shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met. In areas where there are no sanitay sewers, such lot in addition to complying with the foregoing requirements, shall be not less than one hundred (100) feet in width at the building line; have an average depth of one hundred fifty (150) feet; and a total ground area of fifteen thousand (15,000) square feet.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Commercial District shall be nearer than eighty (80) feet to any front lot line, thirty (30) feet from the rear lot line nor twenty (20) feet from any side lot line, except that where the rear or side lot line abuts any lot or land area in a residential district, such structure (unless for a use per-

mitted only under and subject to the provisions of Subdivision A, paragraph 1 of this Section), shall not be located closer than one hundred (100) feet from the line adjoining said residential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application permit a structure to be erected on or in close proximity to one side lot line and/or the rear line provided: (1) the wall of the structure adjoining said lot line shall be a Class "A" Fire wall; (2) the written consent of all property owners adjoining said lot lines is filed with the Board; and (3) said side or rear lot line does not adjoin land in a residential district.

D. MISCELLANEOUS REQUIREMENTS

(a) Any structure, hereafter erected or moved in a Commercial District to be used or occupied solely for residential purposes, shall be subject to all the conditions and restrictions applying to a Residential "A" District.

(b) No other structure, or group of structures, shall hereafter be erected and no structure, land or premises shall be used in a Commercial District unless the following requirements are fully observed:

1. All such operations within a Commercial District, including the storage of equipment, fixed or portable, motor vehicles and of materials, are to be suitably housed and enclosed.

2. No such equipment, fixed or portable, motor vehicles or materials shall be permitted to be stored or displayed nor shall any stands for sale or display be permitted in such a district outside an enclosed building unless a special permit therefor shall have first been obtained from the Zoning Board of Appeals. Such Board may permit the outdoor display or storage of such equipment or materials upon such conditions as it may deem reasonable provided; (1) such storage and display is

an accessory use to the main business conducted or to be conducted on the premises; (2) such storage and display is not within one hundred (100) feet of the line of a residential district; (3) such storage and display is not at such distance from any public highway as to interfere with the safe use of such highway; (4) such storage and display does not unreasonably interfere with the quiet enjoyment of property by adjacent property owners. The fee for the issuance of such a permit shall be Ten Dollars ($10.00). Any permit granted hereunder may be revoked by the Zoning Board of Appeals after due hearing on not less than ten days written notice to the person holding such permit in the event that the holder of such permit violates any of the conditions of the issuance thereof or of this section.

3. All uses within a Commercial District, all structures erected therein and all processes hereafter permitted in said districts shall be so designed and arranged as to prevent noxious gases, fumes, dust, odors, smoke or noises from being discharged to the outside air, in such quantities as to become a nuisance, or any contaminated liquids containing either deleterious, biological compounds or chemical constituents from being discharged into any watercourse.

4. At any time when the specific use originally permitted within a Commercial District is to be changed so that it involves a separate, different and distinct use, process or product, application must be made to the Zoning Board of Appeals for a permit, at which time the Board may require that any and all phases of the operation, which have become or are liable to become detrimental to the neighborhood, be corrected prior to the issuance of such permits.

§ 29-13. Trailer park district.

(a) USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Trailer Park District except for one or more of the following purposes:

1. All uses permitted in a Residential "A" District, subject to all of the conditions and requirements applying to uses permitted in such a Residential "A" District.
2. Trailer parks subject to all of the provisions of the Tourist Camp and House Trailer Ordinances of the Town of Penfield as the same may be in force at the present time and as it may be hereafter amended.
3. Such commercial uses as may be accessory to the operation of a Trailer Park as may be approved by the Zoning Board of Appeals.
4. No addition to any Trailer Park shall be constructed within two hundred and fifty (250) feet of the line of any Residential District, of which area, a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

§ 29-14. Industrial district.

A. PERMITTED USE. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the official zoning map of the Town of Penfield as an Industrial District except for one or more of the following purposes:

1. Any use (other than residential), permitted in a Commercial District subject to the restrictions applicable thereto, and set forth in the provision relating to said District, except only the restriction relating to the number of employees.

2. Customary and ordinary industrial uses which are conducted wholly within a building are permitted. Those uses of lands, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions or for any other reason may prove dangerous to persons or property, are expressly prohibited.

3. In each case where a building or use is proposed in this District pursuant to the provisions of sub paragraph 2 hereof, the Building Inspector shall refer the plans, description of proposed use, and site plan to the Zoning Board of Appeals. Such Board shall hold a public hearing thereon following the procedure required by law for the granting of variances hereunto and shall determine upon the evidence produced at such hearing: (1) whether all requirements of this ordinance have been met; (2) whether the health, safety, morals or general welfare of the community would be protected and (3) whether said plans should be approved as submitted, approved subject to such conditions, restrictions and safeguards as may be deemed necessary by said Board, or disapproved.

B. LOT SIZE. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in an Industrial District unless such lot shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed, or moved in an Industrial District shall be nearer than one hundred (100) feet to any front lot line, nor less than fifty (50 feet from any side or rear lot line, except that where the rear or side lot line abuts any lot or land and area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjojining said desidential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application and after the public hearing referred to herein, permit a structure to be erected on or in close proximity to one side lot line and/or the rear lot line provided; (1) such line does not abut premises in a residential district; (2) the wall of the structure adjoining said lot line shall be a Class "A" Fire Wall and (3) the written consent of all property owners adjoining said lot lines is filed with the Board.

D. STRUCTURES. Only one main structure, with accessory buildings may be erected on any parcel of land for a use permitted in this district.

E. SUBDIVISION OF LAND. Whenever the owner of premises in this district, desires to erect more than one structure thereon, he must prepare and file with the Planning Board such a subdivision, complying with the rules and regulations of said Board applying to all realty subdivisions, including a plan of such highways as are necessary to provide for direct frontage on a State, County or Town Highway or on a highway which appears upon a map approved by the Penfield Planning Board. For purposes of this subdivision, direct frontage is defined as ownership in fee and not access by way of easement and a frontage of sixty (60) feet shall presumptively be sufficient for that purpose.

§ 29-15. Provisions applicable to all districts.

1. LOT AREA. No lot in any District shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this Ordinance nor shall any part of a lot in any District, required by this Ordinance for any building or use be included as part of a lot similarly required for another building or use.

2. HEIGHTS. No structure, except for farm use, and structures in an Apartment House and Multiple Dwelling District, which shall exceed the height of a two story structure as defined in this Ordinance, shall be erected, structurally altered, reconstructed or moved in any District in the Town.

3. DRIVEWAYS. In all Districts, all plans for structures to be erected, altered, moved or reconstructed, and for the use of premises within such districts, shall contain a plan for the proposed driveway access to the premises. No such plan shall be approved unless such driveway access is onto a dedicated public highway or a highway within a subdivision which appears upon a subdivision map approved by the Planning Board. All such plans for structures or uses, other than for a one or two family dwelling, or for farm or dairy structures or uses, shall contain provisions for a separate paved entrance and exit driveway with a minimum width of eight (8) feet, or if a single driveway is provided, the same shall be sixteen (16) feet in width, and marked with a suitable sign "Double Driveway".

4. OFF-STREET PARKING

A. The following parking spaces (9' x 20') shall be provided and satisfactorily maintained by the owner of the property on the premises or in convenient connection therewith for each building which, after the date when this ordinance becomes effective, is erected, enlarged or altered for use for any of the following purposes:

(1) DWELLING: At least one parking space for each dwelling unit.

(2) PROFESSIONAL OFFICE OR CUSTOMARY HOME OCCUPATION: Six (6) parking spaces for each person engaged in the profession or home occupation.

(3) THEATER, CHURCH OR OTHER PLACE OF PUBLIC ASSEMBLAGE: at least one (1) parking space for each three (3) seats, based on maximum seating capacity.

(4) RESTAURANT OR OTHER EATING PLACE: At least one (1) parking space for each three (3) seats, and one (1) parking space for each employee.

(5) HOSPITAL, SANITARIUM, NURSING HOME, ETC.: At least one (1) parking space for each four (4) patients, and one (1) parking space for each employee, attendant or member of the staff.

(6) COMMERCIAL DISTRICTS: All uses in commercial districts except office buildings, shall provide eight (8) parking spaces for each one thousand (1,000) square feet of gross building floor area exclusive of covered sidewalks or malls. [Amended 10-2-67]

(7) OFFICE BUILDINGS: At least one (1) parking space for each two hundred and fifty (250) square feet of office floor area.

(8) INDUSTRIAL BUILDING: At least one (1) parking space for each four hundred (400) square feet of gross floor area, or for each two (2) workers, whichever provides the greater amount of parking space.

B. The recurrent parking of any vehicle on the right-of-way of a highway or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of the failure to provide adequate and suitable parking area on the premises or in convenient connection therewith.

5. NIGHT ILLUMINATION. Where any use in any District, other than for a dwelling for one or two families or for a farm or dairy use, involves operation between the hours of one-half hour after sunset and one-half hour before sunrise, proper exterior illumination of suitable intensity as approved by the Building Official shall be provided at each entrance and exit and along each side of any building so used.

6. JUNK YARDS. No lot in any District may hereafter be used nor any structure erected, reconstructed, structurally altered or moved in any District for use as a junk yard where two or more abandoned automobiles are stored or dismantled for sale of used parts thereof or where junk of any kind or nature such as papers, metals, rags, any second-hand material, lumber or building materials are stored or offered for sale.

7. ROADSIDE STANDS. Any person within any District may erect a roadside stand and sell from same agricultural products produced primarily on his premises. Any such stand of permanent construction shall comply with all the conditions and regulations prescribed for structures in the District in which the stand is located. Any such stand of temporary construction may be erected not nearer to a street line than twenty (20) feet and such stand may be erected and maintained between April 1st and November 30th of any year, but must be removed on or before November 30th of the same year. There must be provided for any roadside stand an off-street parking area sufficient to accommodate vehicles of customers and to eliminate traffic hazards.

8. TEMPORARY STRUCTURES. No structure of a temporary character, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence either temporarily or permanently.

9. CLEAR VIEW AT INTERSECTING STREETS. No obstruction to view between a height of two and one-half (2½) and

ten (10) feet, measured perpendicularly from the street grade, shall be maintained on the premises in the angle formed by intersecting streets so as to interfere with the view of traffic approaching the intersection within the distance of one hundred (100) feet measured along the center line of each street from the intersection of such center lines.

10. FENCES AND HEDGES

(1) No fence, solid hedge or solid shrubbery over three (3) feet in height shall be erected or maintained within twenty (20) feet of any highway line.

(2) The provisions of this section shall not apply to fences on premises used for farm purposes.

11. SITE-PLAN REVIEW [Added 9-7-65]

Prior to issuing a building permit for the construction of a building on a lot in any district, except for a one-family dwelling, the Building Official shall refer the site plan of such lot to the Planning Board for its review and approval. This review shall include, but is not limited to the following:

(1) Adequacy and arrangement of vehicular and pedestrian traffic access and circulation;

(2) Location arrangement and sufficiency of off-street parking;

(3) Location of the building or buildings on the premises;

(4) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a buffer between these and adjoining lands; and

(5) In the case of an apartment house or multiple dwelling, the adequacy of usable open space, including recreational areas.

(6) Adequacy of the provision for the disposal of stormwater and sanitary wastes.

Except for one-family dwellings, no building permit shall be issued except in accordance with a site plan that has been approved by the Planning Board.

12. STORMWATER SEWER DISTRICT [Added 9-7-65]

No building permit shall be issued for the construction of a building on a lot in any district unless such lot is within the boundaries of an established stormwater-sewer district or unless an application to annex such lot to an established stormwater-sewer district or to form a stormwater-sewer district to include such lot has been filed with the Town Board.

13. PARKS AND PLAYGROUNDS [Added 5-1-69]

A. Where deemed essential by the Planning Board upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale neighborhood-unit developments not anticipated in the Master Plan, the Planning Board may require the dedication or reservation of areas or sites of a character, extent and location suitable to the needs created by such development for a park or parks, playground or other recreational uses.

B. If the Planning Board determines that a suitable park or or parks of adequate size cannot be properly located in any such subdivision, or is otherwise not practical, the Board shall require as a condition to approval of the subdivision plat a payment to the town of a playground or recreation site and development fee of seventy-five dollars ($75.) per unit, based upon the following schedule of units:

Single-family dwelling	One (1) Unit
Two-family dwelling	Two (2) Units
Multifamily dwelling, apartments, apartment houses or town houses:	
Studio or one-bedroom apartments	One-Third (⅓) Unit
Two-bedroom apartments	Two-thirds (⅔) Unit
More than two-bedroom apartments	One (1) Unit

Such fee shall be paid to the Building Inspector at the time of the issuance of a building permit for new residential or apartment construction. Where a letter of credit is required, the respective fees shall be included in such letter of credit. Such fees shall be paid over to the Town Clerk and shall be deposited by the Supervisor in a fund designated "Capital Fund for Recreational Development" and shall be used exclusively to purchase, acquire, develop and equip park, playground and other recreational areas.

§ 29-16. Signs. [Amended 2-2-70, effective 2-13-70]

A. Purpose and scope. The purpose is to provide standards to safeguard life, health, property and public welfare by controlling location, construction, installation, illumination and maintenance of all signs and sign structures.

It is the further purpose of this ordinance and regulation of signs to control the quality and quantity of signs so as to enhance the businessman's identification and improve the aesthetics of the community.

B. Definition. A "sign" is defined as any outdoor advertising medium, structure or device which advertises, directs or calls attention to any business, article, substance, service or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing,

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natural object or structure of any kind on real property or upon the ground itself.

C. Prohibition of signs.

(1) No signs shall be hereafter erected, placed or maintained at any place in the Town of Penfield except as provided by this code and only after a permit therefor has been obtained in compliance with the provisions of this section.

(2) Notwithstanding provision (1) above, the owner or occupant of premises in any district may erect a sign thereon for the sale of his property or the products raised thereon, without a permit, provided such sign shall be not larger than sixteen (16) square feet, including both sides of double-faced signs.

(3) The use of pennants, banners, spinners, streamers, moving signs, or flashing, glittering or reflective, animated or rotating signs or similar eye-catching devices is not permitted. Preexisting signs in the above category shall conform to this revised regulation immediately upon the adoption of this ordinance. No signs shall consist of pictorial designs or illustrations.

(4) Any sign or billboard directing attention to a business or to products sold elsewhere than on the same lot is prohibited by this ordinance.

D. Procedure for obtaining permit.

(1) A permit to erect, enlarge, place or maintain any sign permitted by this ordinance must be obtained from the Building Official.

(2) Application for a permit which requests a sign not permitted under this ordinance must be presented to the Penfield Zoning Board of Appeals. Upon such an application to the Board, a public hearing shall be held,

with notice of such hearing published in accordance with law. The Zoning Board of Appeals may, after holding such public hearing, grant such variance(s) as it shall determine in accordance with the applicable provision of laws. Before recommending the issuance of such a permit, the Zoning Board of Appeals must find the following facts to be true:

(a) The proposed sign(s) is (are) in harmony with the standards for permitted signs and within the spirit of the ordinance.

(b) The presence of the proposed sign shall not be detrimental to adjacent property.

(c) The proposed sign does not, by reason of its location, create a hazard of any nature to the public in general or to any adjacent owner or occupant.

(d) The proposed sign(s) does (do) not in any way interfere with the lawful enjoyment of the public highway or of adjacent property.

(3) Application for a sign permit shall be made in writing by the owner, lessee or erector and be accompanied by a scale drawing showing dimensions, proposed design, the legend, colors, materials, structural details and a tape or plot location map delineating location of buildings, parking areas, other signs on the same property, frontage of each unit, and/or any fences or other obstructions in relation to the designated location of the proposed sign. Lessee or erector applicants shall evidence approval of owner for such erections.

(4) The fee for the issuance of a sign permit shall be one dollar ($1.) per square foot of sign area. Any additions to an existing sign shall be by permit application, as prescribed above, and be subject to a fee of one dollar ($1.) per square foot for the additional footage of sign area.

(5) Double-faced signs shall be calculated at total area of both sides for purpose of assessing fees. Area of irregular shaped signs or panel signs of individual letters shall be calculated by using the total rectangular area encompassed by the outline.

(6) No permit issued under the terms of this section shall be transferable to any person other than the original applicant without the consent of the Zoning Board of Appeals.

(7) A sign permit shall become null and void if the work for which the permit was issued has not been started within a period of six (6) months after the date of issue of the permit.

E. Standards for permitted signs.

(1) Individual business establishments will be permitted one (1) identification sign except where there is public access to the other side of the building, such as on a corner where there are both front and side entrances on a public street or parking lot providing access to the building, in which case one (1) additional identification sign will be permitted for each entrance. In addition to the above, one (1) freestanding sign may be permitted, but only upon application to and approval by the Zoning Board of Appeals.

(a) Such signs shall be located on the same premises as the business or profession to which they refer.

(b) Such sign(s) shall be securely attached to the buildings or to structurally sound standards.

(c) The total area of such sign(s) on each lot shall not exceed three (3) square feet for each linear foot of building frontage facing toward a street or parking-lot area.

(d) Freestanding sign(s) is (are) not to be located closer to the public way than twenty (20) feet, and no sign shall exceed twenty (20) feet in height above the ground level, nor sixty-four (64) square feet per face of a double-faced sign. A minimum height from ground level to the bottom of the sign panel must be such that there will be no interference with sight distance.

(e) No sign shall be erected in such a manner as to confuse or obstruct the view of any traffic sign, signal or device.

(2) No sign of any size or description, except traffic signs placed by public agencies, may be erected, placed or maintained within the highway limits of any public way within the Town of Penfield. No billboard or sign which now extends into, has been erected in, or suspended over any portion of a public way may remain unless the owner delivers to the Town of Penfield an insurance policy insuring the town against all loss, liability or damage suffered by all persons by reason of the construction or maintenance of such sign, and shall be written at limits of twenty-five thousand dollars ($25,000.) for property damage, fifty thousand dollars ($50,000.) for bodily injuries to one (1) person and one hundred thousand dollars ($100,000.) for bodily injuries for more than one (1) person as a result of one (1) accident.

(3) The Building Official shall require the proper maintenance of all signs, and such signs, together with their supports, shall be kept in good repair. The display surfaces shall be kept neatly painted at all times. The Building Official may order the removal of any sign that is not maintained in accordance with the provisions of this code. Painting, repainting, cleaning or repair maintenance shall not be considered an erection

or alteration which requires a permit unless a structural change is made.

(4) No permit shall be required to change the advertising copy or message on a painted, printed or changeable-letter sign.

(5) Signs in commercial or industrial districts may be illuminated if the illumination is indirect and is so designed and shielded that the light sources do not constitute a possible hazard to traffic and cannot be seen from any adjacent residential district. A New York State Board of Fire Underwriters' Certificate of Approval must be submitted for every electrically illuminated sign.

(6) Regulations applying to motor vehicle supply stations.

(a) One (1) sign on the face of the building identifying name of the station, not to exceed the limits as stated in Subsection E (1) (c).

(b) One (1) pole sign with trademark, nonrotational, not to exceed the restrictions as stated in Subsection E (1) (d).

(c) One (1) accessory sign attached or adjacent to the building indicating services, products, trade information or other information, excluding product advertising, may be permitted on one (1) permanent sign, structure, single-faced, and not to exceed thirty-two (32) square feet in total area.

(7) Political posters. Special permits for political posters and signs may be granted by the Building Official. Such posters and/or signs must be removed within ten (10) days after election.

(8) Signs for the internal control of traffic, including entrance and exit types, may be necessary in some

eases and permits therefor may be issued by the Building Official.

(9) Signs during construction or in connection with a real estate development may be permitted for a temporary period of not more than six (6) months, provided such sign does not exceed thirty-two (32) square feet. The fee for the issuance of a permit for such a sgn shall be ten dollars ($10.). Any such permit may be renewed for additional periods of like duration under the same procedures and conditions and for a like fee as required for the original permit.

(10) Shopping plazas and industrial areas are permitted one (1) major identification sign on application to the Zoning Board of Appeals.

(11) The use of "A" frame or removable curbside signs is prohibited except those used for real estate sales pertaining to available lots and houses within the Town of Penfield, and these are not to exceed six (6) square feet per side or a total area not to exceed twelve (12) square feet. Any existing signs not conforming to this provision shall be removed upon adoption of this ordinance.

(12) The discontinuance of business at any given location shall require the removal within fifteen (15) days of all signs relating to said business.

F. Existing signs.

(1) Any sign(s) or billboard existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which no permit was issued shall be removed within six (6) months from the effective date of this ordinance.

(2) Any sign existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which a permit was issued shall be removed within two

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(2) years from the effective date of this ordinance, except that in no event shall such an existing sign be required to be removed less than ten (10) years from the date of issuance of the permit.

G. Penalties for violation.

(1) Violations of the requirements of this ordinance are subject to the penalties as set forth in § 29-27 of the Zoning Ordinance.

(2) The Building Official shall have the authority to enforce the removal of any signs that are in violation of this ordinance. Failure to comply with this written order within ten (10) days shall be considered a violation. If after thirty (30) days from date of such notice the objectionable sign has not been removed, the Town of Penfield shall have the authority to remove such sign and will charge the owner for the cost of the removal.

(3) Prior to this action, the owner of the sign may request a hearing before the Zoning Board of Appeals, and no action will be taken by the town until a decision has been rendered by the Zoning Board of Appeals.

H. Severability provisions. If any section, subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

§ 29-17. Filling of land and dumping of waste material.

A. The use of stone, brick, building blocks, gravel, fill dirt or top soil, whether originating on the premises or elsewhere, for the purpose of filling to establish grade and/or to improve the front, side or rear yard areas of an existing structure or of a proposed structure for which a building permit has been issued, is hereby

permitted in any district within the Town of Penfield, provided that any area where stone, brick, gravel and fill dirt are deposited shall within a reasonable time be covered with at least one (1) foot of clean nondeleterious top soil and seeded with a permanent pasture mixture or other fast-growing surface vegetation, and that such reseeding shall continue until growth has been established. Reasonable time as herein used shall be construed to mean no later than the end of the next natural planting season following the commencement of said filling operation.

B. The dumping of any material not expressly permitted in Paragraph A of this section is hereby declared to be the dumping of waste material and is prohibited in all districts in the town except under a permit therefor issued by the Zoning Board of Appeals after a public hearing thereon.

C. Before issuing a permit hereunder, the Zoning Board of Appeals shall find the following facts based upon the evidence produced at the public hearing or submitted to it or upon personal observation of members of the Board:

1. The granting of such permit is in the public interest to establish grades or improve the premises in question.
2. The proposed operation does not create a public hazard.
3. The proposed operation will not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property.
4. Adequate plans have been presented to show that the material or substance so deposited is to be leveled off as soon as deposited; dust preventative or similar material is to be used and applied to prevent dust and sand from flying or being carried from said premises during and on the completion of said operation; sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance; and when the operation is completed the material will be covered with at least one (1) foot of clean non-

deleterious top-soil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast growing surface vegetation and that such reseeding is to continue until growth has been established.

5. The Zoning Board of Appeals may require as a condition for the issuance of such a permit that the applicant file with the Town a surety company bond in an amount to be fixed by the Board, conditioned upon the compliance of the applicant with the conditions fixed by the Board upon the issuance of said permit, to insure compliance with the provisions of this section.

6. Any such permit issued by the Zoning Board of Appeals shall expire on the 31st day of December following the issuance thereof and may be renewed under the same procedures and conditions required for the original permit.

7. The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

8. Any permit issued hereunder may be revoked after a hearing upon ten (10) days written notice to the holder of such permit, upon proof presented to the Zoning Board of Appeals that any condition of this section has not or is not at the time of the hearing being complied with.

§ 29-18. Motor vehicle supply stations. [Amended 7-5-67]

(a) The Town Board may, on special application issue a permit for the operation of a motor vehicle supply station in any Commercial District. The Board may require the applicant to submit such information as it may require, and to fix the location of all structures on the premises. No such permit shall be issued

unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing, that:

1. The proposed structures are located consistent with the regulations of the district in which they are to be located, and that the design and type of proposed structure is in harmony with other structures in such neighborhood. [Amended 7-5-67]

2. The proposed use will not create a traffic hazard at the proposed location. To this end a minimum frontage of two hundred (200) feet will be required on any road used for access to the station. [Amended 7-5-67]

3. The applicant has, in writing, agreed to construct and operate such proposed station in strict accordance with such conditions and restrictions as may be imposed by the Town Board. [Amended 7-5-67]

4. The lot area is sufficient to permit construction of the largest station that might be needed in the future. This should at the least provide for four (4) inside bays and parking for fifteen (15) cars, of which ten (10) spaces must be in a screened area behind the station. [Added 7-5-67]

5. All parking and outside storage shall comply with the front, side and rear lot setback requirements. [Added 7-5-67]

(b) Any permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten days notice to the person holding such permit in the event that the use violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit, or shall have become a nuisance.

(c) Any such special permit heretofore granted shall be deemed to be indefinitely extended subject, however, to the power of revocation hereinbefore, and in this section, set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-19. Utility or communication installations.

(a) The Town Board may, on special application, issue a permit for the construction and maintenance of a public or private utility or communication structure, as it shall deem essential to the public welfare, and impose such conditions as may be found necessary in the public interest and may modify or vary the restrictions of this Ordinance as to height, size and location of structures applying to the District where such installations is to be located. No such permit shall be issued unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing that:

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1. The proposed installation will not be detrimental to adjacent property.
2. The proposed installation will not by reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. The proposed installation will not unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any such permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten (10) days notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

(c) Any such permit heretofore granted shall be deemed to be indefinitely extended, subject however, to the power of revocation hereinbefore and in this section set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-20. Recreational area. [Amended 9-6-66]

(a) The Town Board may, on application, issue a temporary permit for a term which it may specify, for the use of a specified area in any District for a private playground, athletic field, carnival, circus, or other recreational or amusement use, whether operated for profit or not. The Board may require the applicant to submit such information as it may require and may fix the location of all structures on the premises. No such permit shall be issued unless a recommendation is received from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find after public notice and hearing, that the contemplated use will not:

1. Be detrimental to adjacent property.
2. By reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. Unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance and any such permit may be renewed by the said Board for such period as it shall determine, upon application in accordance with the procedures for an original permit.

(c) The fee for the issuance of a permit, or of any renewal thereof, under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-20.1 Swimming pools. [Added 9-6-66, amended 9-5-67]

(a) PRIVATE SWIMMING POOLS are hereby declared to be a permitted accessory use in any Residential District. A permit must be obtained from the Building Department prior to the erection of any private swimming pool, but no such pool shall be constructed or maintained in any district unless:

1. Such pool and any appurtenances, such as aprons or decks, shall conform to the minimum setback requirements for a structure in such District.
2. There shall be erected and maintained a chain-type fence or other similar protective type of enclosure completely enclosing the area containing such pool, such fence or enclosure to be not less than four (4) feet in height above ground level, any fence portion thereof to be securely supported by posts at intervals of not more than eight (8) feet, and permitting access, other than directly from the dwelling, only by a gate that may be securely fastened

and locked. A fence shall not be required in the case of and aboveground pool when the structural walls thereof are at least four (4) feet above ground level, except that any steps leading to the pool deck shall be enclosed by a gate that may be securely fastened and locked. Notwithstanding the foregoing, a fence shall be required if the walls of the pool are so constructed or any appurtenant structures, such as a filtering system, are so located as to provide a means by which the wall of this pool can be climbed and entry gained to the deck of the pool.

3. There is a sufficient source of water supply to accommodate such pool without detriment to normal water consumption requirements and all proposed water connections are proper and adequate.

4. The proposed drainage of such pool is adequate and will not interfere with the public water supply system, with existing sewage and drainage facilities, with the property of others or with public highways.

5. A suitable filtering system is installed in pools requiring in excess of one thousand seven hundred sixty (1,760) gallons of water to fill. [Approximately ten (10) feet diameter by thirty-six (36) inches deep]

(b) GROUP SWIMMING POOLS. No group swimming pool shall be constructed or maintained in any district unless a special permit therefor is granted by the Town Board, except that permits for swimming pools to be erected in connection with apartments or motel structures may be issued by the Building Department. No such permit shall be issued unless a favorable recommendation is received from the Zoning Board of Appeals which, after a public notice and hearing, has found that the proposed pool will not:

1. Be detrimental to adjacent property.

2. By reason of its location or nature create a hazard of any nature to the public or to any adjacent owner or occupant.

3. Unreasonably interfere with the lawful enjoyment of the public highway or of adjacent property.

4. Violate any standards and requirements of the State of New York and the Monroe County Health Department.

Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days' notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance.

(c) The fee for the issuance of a permit under this section shall be the sum of one cent ($0.01) per square foot of ground area covered.

§ 29-20.2. Golf courses. [Added 6-7-71, effective 6-27-71]

A. The Town Board may, on special application, issue a permit for the construction and maintenance of a golf course, as hereinafter defined, in any district of the town.

B. "Golf Course" is defined to mean any privately, semi-privately or publicly owned course consisting of at least nine (9) golf holes of conventional design and distance, and may include the following facilities as accessory to the principal use:

(1) Clubhouse, including kitchens, dining areas, game rooms, bar, grill, locker rooms, baths.

(2) Swimming pools.

(3) Parking areas.

(4) Tennis or paddle-ball courts.

C. In the case of a golf course containing eighteen (18) or more holes of play, there may be included the following additional facilities as accessory to the principal use:

(1) Pitch-and-putt course, unlighted.

(2) Driving range, unlighted.

D. No such permit shall be issued unless a recommendation is first obtained from the Planning Board. Prior to recommending the issuance of such a permit, the Planning Board shall find, after public notice and hearing that:

(1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

(2) The proposed use would not endanger or tend to endanger the public health, safety, morals or the general welfare of the community. In making such determination, the Board shall consider lot areas; necessity for and size of buffer zone; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the nature and use of other premises, and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property. Where structures require sanitation facilities, it shall be a requirement that public sewers be available.

(3) The proposed use will be in harmony with the probable future development of the neighborhood, and will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

E. In granting such a permit the Town Board may attach such conditions and limitations as it considers to be desirable in order to insure compliance with the application and the purposes of this ordinance.

F. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

G. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon proper resolution by the Town Board and the payment of a fee of one hundred dollars ($100.), and shall issue a renewal annually thereafter in January of each year upon payment of like fee.

§ 29-21. Administration.

This ordinance shall be administered by the Building Official who shall be appointed and may be removed by the Town Board and who shall serve at the pleasure of the Town Board. It shall be the duty of the Building Official to secure the enforcement of this ordinance, subject to the rules, regulations, resolutions and ordinances of the Zoning Board of Appeals and the Town Board, and issue all permits or certificates required by this ordinance.

§ 29-22. Building permits.

No permit for the construction, structural alteration, reconstruction or moving of a structure shall be issued by any official

of the Town of Penfield, unless the application therefor has been certified by the Building Official as apparently complying with this ordinance.

§ 29-23. Certificate of occupancy.

It shall be unlawful to use or to permit the use of any structure hereafter erected, structurally altered, reconstructed, moved or converted wholly or partly in its use, or of any premises here-

after altered or converted, wholly or partly in its use, until a Certificate of Occupancy to the effect that the structure or premises so erected, altered, reconstructed or moved and the proposed use thereof, conform to the provisions of this Ordinance, shall have been issued by the Building Official.

§ 29-24. Zoning Board of Appeals.

a. ORGANIZATION. The Zoning Board of Appeals, heretofore created pursuant to the provision of the Town Law, is hereby continued as now constituted. Each member of said Board shall continue to hold office to the expiration of his present term, at which time the Town Board shall appoint a successor as provided by law.

b. PROCEDURE. The Zoning Board of Appeals, consistent with the provisions of the Town Law applicable thereto, shall determine its own rules of conduct and procedure.

c. POWERS.

(1) REVIEW. Any interested or aggrieved party shall have the right to appeal to the Zoning Board of Appeals from any order, requirement, decision or determination made by the Building Official, and said Board shall thereupon hear and determine the same.

(2) VARIANCES ON APPEAL. The Zoning Board of Appeals shall have the power upon appeal and after public notice and hearing, to vary or modify the application of any of the regulations or provisions of this Ordinance relating to the use, construction, or alteration of structures, or the use of land, where it shall appear that there are practical difficulties or unnecessary hardships in the carrying out of the strict letter of this Ordinance, to the end that the spirit of the Ordinance shall be observed, public safety and welfare secured and substantial justice done.

(3) SPECIAL PERMITS AND VARIANCES. When in its judgment the public convenience and welfare will be serv-

ed and the appropriate use of neighboring property will not be substantially injured thereby, the Zoning Board of Appeals may, in appropriate and specific cases, after public notice and hearing and subject to appropriate conditions and safeguards, vary the application of the regulations of this Ordinance and grant exceptions in harmony with their general purpose and intent, as follows:

(a) Grant a permit whenever it is provided in this Ordinance that approval of the Zoning Board of Appeals is required or refuse to grant the same where such action is justified.

(b) Permit such variation of the yards, lot area or lot width requirements of this Ordinance as may be necessary to secure an appropriate improvement of a parcel of land where such parcel was separately owned or where such parcel was subdivided and recorded in the office of the Clerk of Monroe County at the time of the adoption of this Ordinance and is of such restricted area or exceptional topography that it cannot be appropriately used or improved without such variation.

(c) Permit in any district, such modification of the requirements of these regulations as to height, yards, lot area and lot width, as said Board may deem necessary and proper to secure appropriate development of a lot where adjacent thereto are buildings or structures that do not conform to such regulations.

(d) Permit the extension of a non-conforming use or structure provided such use or structure existed at the time this Ordinance becomes effective.

(e) Permit the extension of a structure or use into a more restricted district immediately adjacent thereto, but not more than fifty (50) feet beyond the boundary line of the district in which said structure or use is authorized.

(f) Permit such modification or variation of the yards, lot area and lot width requirements of this Ordinance as will permit completion of the development of a tract of land according to the Ordinance in effect when such development was first commenced, in instances where a map of a part of such tract has been approved and construction actually commenced prior to the adoption of this Ordinance.

§ 29-25. Appeal from decisions of Zoning Board of Appeals.

Any interested or aggrieved person may appeal to the Town Board from any action, decision or determination of the Zoning Board of Appeals by filing a written notice of such appeal with the Clerk of the Town of Penfield within ten (10) days after such action, decision or determination has been taken or made. The Town Board shall thereafter hear and determine such appeal upon the evidence produced before the Zoning Board of Appeals or upon such new or additional evidence as it shall see fit to receive.

§ 29-26. Amendments.

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Planning Board, after public notice and hearing, amend, supplement, change, modify or repeal this Ordinance or change the Official Amended Zoning Map, pursuant to the provision of the Town Law applicable thereto. Every such proposed amendment shall be first referred to the the Planning Board for report prior to public hearing thereon.

§ 29-27. Penalties.

Any person, firm, company or corporation owning, controlling or managing any structure or lot wherein or whereon there shall be placed or there exists anything in violation of any of the provisions of this Ordinance; and any person, firm, company or corpo-

EXHIBIT A

ration who shall assist in the commission of any violation of this Ordinance, or of any conditions imposed by the Zoning Board of Appeals, or, who shall build any structure contrary to the plans or specifications submitted to the Building Official and by him certified as complying with this Ordinance; and any person, firm, company or corporation who shall omit, neglect or refuse to do any act required by this Ordinance, shall be guilty of an offense and subject to a fine not to exceed Fifty Dollars ($50.00), or by imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment, or by a penalty of Five Hundred Dollars ($500.00) to be recovered by the Town of Penfield in a civil action. Each week that such violation, disobedience, omission, neglect or refusal shall continue, shall be deemed a separate offense. In addition to the remedies hereinabove set forth, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, demolition, moving and/or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or premises, or to prevent any illegal act, conduct, business or use in and about such premises.

§ 29-28. Repeal of Existing ordinances.

All rules, regulations and ordinances of this Town, inconsistent herewith, are hereby repealed as of the date this Ordinance takes effect, except that this Ordinance does not repeal, abrogate or impair conditions now existing or permits previously issued relating to the erection or alteration of structures or the use of the premises but whenever this Ordinance imposes greater restrictions upon the erection or alteration of structures or the use of the premises than required by existing provisions of law, ordinances, regulations or permits, the provisions hereof shall control insofar as the same is legally permissible.

§ 29-29. Effective date.

This Ordinance shall take effect immediately upon it passage, publication and posting of notice of adoption thereof, as prescribed by law, or by personal service of a certified copy hereof.

2940

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing

NOTICE OF MOTION TO DISMISS COMPLAINT

Civil Action
1972-42

TO: Robinson,Williams,Robinson and Angeloff
Attorneys for Plaintiffs
700 Reynolds Arcade Building
Rochester, New York 14614

PLEASE TAKE NOTICE that upon the annexed affidavit of James M. Hartman, sworn to the 30th day of March, 1972, the undersigned will move this Court at a Motion Term thereof to be heard at the Federal Building, Church and Fitzhugh Streets, in the City of Rochester, New York, on the 24th day

NOTICE OF MOTION TO DISMISS COMPLAINT

of April, 1972, at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for the following relief:

1. To dismiss the action on the ground that this Court does not have jurisdiction over the subject matter of this action pursuant to Rule 12(b)(1).

2. To dismiss the action on the ground that the complaint fails to set forth a claim upon which relief can be granted pursuant to Rule 12(b)(6).

The undersigned will further move this Court, in the alternative, for an Order pursuant to Rule 12(e) for a more definite statement of the complaint on the ground that the same is too vague, general and indefinite to apprise the defendants

NOTICE OF MOTION TO DISMISS COMPLAINT

of the nature of the claim and enable them to frame a responsive pleading.

PLEASE TAKE FURTHER NOTICE that the undersigned will move at the time and place aforesaid for an Order pursuant to Rule 23(c)(1) determining that this action has been improperly instituted as a class action and should be dismissed on the ground that the same does not meet the requisites set forth in Rule 23 for a class action.

HARRIS, BEACH AND WILCOX
Counsel to Andrew V. Siracuse, Esq.
Attorney for Defendants
Office and Post office Address
Two State Street
Rochester, New York
14614
716-232-4440

By/s/James M. Hartman
A member of the firm

DATED: Rochester, New York
March 30, 1972

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - -

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, et al.,

Plaintiffs

-against-

IRA SELDIN, Chairman, et al.,

Defendants.

- - - - - - - - - - - - - -

MOTION TO DISMISS COMPLAINT

Civil Action 1972-42

Defendants move this Court to dismiss this action for the reason that the Court lacks jurisdiction over the subject matter of the action for the reason that none of the plaintiffs has standing to bring this suit and none of the defendants has any interest in the subject matter of the suit and that the defendant Metro-Act, Inc., is an improper party plaintiff and for the further reason that

the complaint fails to show the existence of an actual controversy between the parties of the nature required by Article III of the United States Constitution and Section 2201 of the Judicial Code, Title 28; and defendants further move the Court to dismiss this action for the reason that the plaintiffs have failed to state a claim upon which relief can be granted as required pursuant to Section 12(b))6) of the Federal Rules of Civil Procedure for the reason that plaintiffs have failed to set forth a short and plain statement of the claim showing that the pleader is entitled to relief in accordance with Rule 8 of the Federal Rules of Civil Procedure and the defendants further move in the alternative for an Order pursuant to Section 12(e) directing a more definite statement for the reason the complaint

herein is so vague and ambiguous that defendants cannot be reasonably required to frame a responsive pleading in that no time, date, place or act has been alleged; and the defendants further move for an Order pursuant to Rule 23 (c)(1) determining that this action has been improperly commenced as a class action for the reason that plaintiffs have failed to show that the class is so numerous that joinder of all members is impractical, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of the claims or defenses of the class and particularly with reference to Rule 23(b)(2) under which the action is purported to have been commenced that the party opposing the class has acted or

refused to act on grounds generally applicable to the class thereby making appropriate and final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

HARRIS,BEACH AND WILCOX
Counsel to Andrew V.
Siracuse, Esq.
Attorney for Defendants
Office and Post
Office address
Two State Street
Rochester, New York
14614
716-232-4440

By/s/James M. Hartman
A member of the firm

DATED: Rochester, New York
March 30, 1972

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

ROBERT WARTH, Individually
and on behalf of all
other persons similarly
situated, et al.,

Plaintiffs,

-against-

IRA SELDIN, Chairman, et al.,

Defendants.

- - - - - - - - - - - - - - - - - -

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

JAMES M. HARTMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Harris, Beach and Wilcox, of counsel in this litigation to Andrew V. Siracuse, Esq., attorney for the Town of Penfield, New York, and I submit this affidavit in support of the defendants' motion, pursuant

to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint on the ground that this Court lacks jurisdiction over the subject matter of this case and that the complaint fails to set forth a claim upon which relief can be granted and, in the alternative, pursuant to Rule 12(e) for a more definite statement of the complaint.

2. This is a class action brought against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982,1983 and 1984, and pursuant to Title 28, United States Code, Section 2201, as well as the First,Ninth and Fourteenth Amendments to the Constitution of the United States. Under attack in this lawsuit are the zoning laws and practices of the defendants herein,

on the ground that they are discriminatory and exclusionary. The relief sought is a judgment declaring the zoning ordinance of the Town of Penfield null and void under the aforesaid statutes and Constitution of the United States; enjoining the aforesaid defendants from enforcing the same; compelling them to enact a nonexclusionary zoning ordinance and granting damages in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

3. The plaintiffs have brought this action on behalf of themselves and other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(b)(2).

4. Plaintiffs Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris have alleged that they are property owners and taxpayers of the City of Rochester and it is as such that they claim standing

to sue herein, although the City of Rochester is not a party to this action. The complaint does not allege any direct injury resulting to any of these plaintiffs as a result of the land-use laws and practives of the Town of Penfield. They have not alleged any measurable appropriation or disbursement of tax monies by the Town of Penfield which they seek to challenge. Although suing herein as taxpayers, they do not allege any genuine, good-faith, dollars-and-cents injury to themselves, or any other injury which singles any of them out from the general run of mankind.

5. Plaintiff Andelino Ortiz alleges, in addition to being a property owner and taxpayer of the City of Rochester, that "he is employed in the Town of Penfield, New York, but has been excluded

from living near his employment as he would desire by virtue of the illegal, unconstitutional and esclusionary practices of the Town of Penfield." The complaint does not set forth any right of plaintiff Ortiz which is alleged to have been infringed, although the complaint does contain the implicit assertion that the Constitution of the United States guarantees satifaction of a "desire" to reside in the Town of Penfield.

6. There is no allegation in the complaint that plaintiff Ortiz has ever attempted to take up residence in the Town of Penfield; nor does the complaint allege what laws of the Town of Penfield or what practices of the defendants herein have frustrated his desire to take up residence in the Town of Penfield.

7. Plaintiffs Clara Broadnax,

Angelea Reyes and Rosa Sinkler allege that they are residents of the City of Rochester and are persons of low and moderate income, who cannot afford to live in the Town of Penfield. They seek a declaration that the Town of Penfield's zoning ordinances exclude them from residing within the Town and are, therefore, unconstitutional. As with plaintiff Ortiz, the complaint fails to set forth the basis of any legal right enjoyed by these plaintiffs, other than to imply that any person who wishes to reside in the Town of Penfield possesses a constitutional right to do so. As with plaintiff Ortiz, there is no allegation that any of these plaintiffs has made an effort to take up residence in the Town of Penfield; nor, other than citing the entire Zoning Ordinance of the Town of Penfield, has the complaint alleged

any local laws of the Town of Penfield or any practices of the defendants herein which have frustrated the desire of any of these plaintiffs to take up residence in the Town of Penfield or which have injured any of them in any other way.

8. While the complaint alleges discriminatory and exclusionary practices, no particular instances of such practices are set forth; there is no recitation of times, dates, persons or agencies in connection with such practices. No connection whatever is made between any plaintiff's race, nationality or any other personal characteristic and the claims set forth in the complaint. There is no suggestion that any particular law of the Town of Penfield is discriminatroy on its face; indeed, there is no mention of

any specific local law.

9. Plaintiff Metro-Act of Rochester, Inc. has alleged no facts which would form a basis for standing in this action, or which indicate that it possesses any right or has suffered any injury which has anything whatever to do with the issues in this lawsuit. The complaint merely states that the main purpose of the organization is to alert citizens to problems of social concern and to inquire into the need for low and moderate income housing; and it apparently asserts standing in this case, not on the basis of any right or interest of its own which has been infringed, but rather on the basis of its social conscience and its role as a promoter of the social welfare.

10. This is an inappropriate suit in which to bring a class action. First, a class under Rule 23 of the Federal Rules of Civil Procedure has standing only to the extent that the named parties representing it have standing. Second, the classes involved in this lawsuit are either not so numerous as to prevent joinder of all members of the class, or are so numerous and indefinable as to render it impossible to ascertain who belongs to the class and effectively to give notice to the members of the class. Finally, a class action is wholly unnecessary in this case. Because monetary damages are not allowable in a class action under Rule 23 (b)(2), the only relief which could be granted to these plaintiffs is declaratory and injunctive in nature. If the Zoning Ordinance of the Town of

Penfield were declared unconstitutional, and if the defendants herein were enjoined to adopt a different zoning ordinance, the effect of such relief, both upon the named plaintiffs and those persons whom they seek to represent, would be exactly the same, whether or not this action takes the form of a class action. By converting this lawsuit into a class action, therefore, the plaintiffs achieve nothing, while running the risk of prejudicing those who are found to be members of the class.

WHEREFORE, deponent respectfully requests that this Court grant the defendants' motion in all respects.

/s/ James M. Hartman

Jurat omitted
in printing

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY, KATHARINE HARRIS, ANDELINO ORTIZ, CLARA BROADNAX, ANGELEA REYES, ROSA SINKLER, each individually and on behalf of all other persons similarly situated, and METRO-ACT OF ROCHESTER, INC.,

PLAINTIFFS,

-vs-

IRA SELDIN, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, FRANCIS J. PALLISCHECK, DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield; and the TOWN OF PENFIELD, NEW YORK

Defendants,

Civil Action No. 1972/42

NOTICE OF MOTION

NOTICE OF MOTION

ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Applicant for Intervention.

PLEASE TAKE NOTICE that upon the annexed Affidavit of Sanford J. Liebschutz, sworn to the 28th day of April, 1972, the undersigned will move this Court at a motion term thereof, to be heard at the Federal Building, in the City of Rochester, New York on the 8th day of May, 1972 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 24(b) of the Federal Rules of Civil Procedure for an Order permitting the Rochester Home Builders Association, Inc. to intervene in this action as a party Plaintiff.

NOTICE OF MOTION

LIEBSCHUTZ, ROSENBLOOM,
& SAMLOFF
Attorneys for Applicant
for Intervention
Office and Post Office
Address
101 Powers Building
Rochester, New York
14614

TO: ROBINSON, WILLIAMS,ROBINSON AND ANGELOFF
Attorneys for Plaintiffs
Office and Post Office Address
700 Reynolds Arcade Building
Rochester, New York 14614
716-454-1990

HARRIS, BEACH & WILCOX
Counsel to ANDREW V. SIRACUSE
Attorneys for Defendants
Office and Post Office Address
2 State Street
Rochester, New York 14614
716-232-4440

ANDREW SIRACUSE, ESQ.
Attorney for Defendants
Office and Post Office Address
601 Executive Office Building
Rochester, New York 14614
716-325-7700

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

Civil Action
No.
1972/42

MOTION TO
INTERVENE
AS
PLAINTIFF

Rochester Home Builders Association, Inc. moves for leave to intervene as a Plaintiff in this action, in order to assert the claim set forth in its proposed Complaint of which a copy is hereto attached, on the ground that there are common questions of law and/or fact between the claims of the Plaintiffs and the claim of this Applicant for Inter-

vention.

/s/ Sanford J. Liebschutz
Liebschutz, Rosenbloom
& Samloff
Attorneys for Rochester
Home Builders Association,
Inc., Applicant for
Intervention
Office and Post Office
Address
101 Powers Building
Rochester, New York 14614
716-546-8240

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

Civil Action
No.
1972/42

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

SANFORD J. LIEBSCHUTZ, being duly sworn, deposes and says:

1. I am a member of the firm of Libeschutz, Rosenbloom & Samloff, attorneys for Rochester Home Builders Association, Inc., Applicant for Intervention, and I submit this affidavit in support of Applicant's motion pursuant to Rule 24(b) of the Federal Rules of Civil Procedure for permission to

intervene in this action as a party plaintiff on the ground that there are common questions of law and/or fact between the claims of the Plaintiffs and the claim of the Applicant for Intervention.

2. Plaintiffs bring this action individually and as a class action against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982, 1983 and 1984 and pursuant to Title 28, United States Code, Section 2201 as well as the First, Ninth, and Fourteenth Amendments to the Constitution of the United States. This action attacks the zoning laws and practices of the Defendants on the ground they are discriminatory and exclusionary. The relief sought is a judgment declaring

the zoning ordinance of the Town of Penfield null and void under the aforesaid statutes and the Constitution of the United States; enjoining the aforesaid Defendants from enforcing same; compelling the Defendants to enact a non-exclusionary ordinance, and granting damages in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) to Plaintiffs.

3. The Rochester Home Builders Association, Inc., in the Complaint annexed hereto, asserts similar and common claims. As a trade association and representative of its members, the Rochester Home Builders Association allege that they have been subject to the same discriminatory and exclusionary zoning practices as alleged in Plaintiffs' Complaint, and as a result thereof have

been unable to construct housing and provide same for all of the metropolitan Rochester area population which is entitled to the opportunity to purchase such housing, and that specifically members of the Rochester Home Builders Association have been denied relief from such zoning ordinances permitting them to construct such housing.

4. By examination of the Complaint of the Plaintiffs and the Complaint of the Application for Intervention, it will be seen that the basic thrust of both actions is to declare null and void the zoning ordinances and the exclusionary zoning practices of the Town of Penfield and direct that a new ordinance be prepared. Since the members of the Applicant for Intervention have constructed substantially all of the sale and rental, single family

and multi-family housing units in the Town of Penfield as well as the Metropolitan Rochester area over the past 15 years, they represent a party who would be most affected by the continuing exclusionary zoning practices of such Town as well as any reformation of such pract

WHEREFORE, deponent respectfully requests that this Order grant Applicant's motion in all respects.

/s/Sanford J. Liebschutz
Sanford J. Liebschutz

Jurat
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STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Plaintiff,

-vs-

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield and the TOWN OF PENFIELD, NEW YORK,

Defendants.

- COMPLAINT

Plaintiff, above named, by its attorneys, Liebschutz, Rosenbloom & Samloff, as and for its Complaint against the Defendant, alleges:

INTERVENOR COMPLAINT

FIRST: This is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, 1983 and pursuant to Title 28 USC 2201, and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title USC 1331, 1343 and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes of action herein contained.

SECOND: Now and at all times hereinafter mentioned, Plaintiff was and is a corporation organized under the Not-for-Profit Corporation (formerly Membership Corporation) of the State of New York. The purposes for which it was formed were, among others, to be a non-profit trade association, representative of those per-

sons and companies engaged in construction, development and maintenance of residential housing in the County of Monroe and adjacent and surrounding counties, and those persons, firms and corporations engaged in ancillary occupations thereto; to foster and promote the housing industry; to effect civic development and procure even and just taxation; to promote and encourage provision for adequate housing for all members of the community. Plaintiffs office is located in the City of Rochester, New York.

THIRD: Over 110 members of Plaintiff are engaged directly in the business of construction of sale and/or rental housing to the public at large in Monroe County and approximately 10% of its members are presently or in the recent past engaged in construction of, sale and/or rental housing in the Town of Penfield.

During the past 15 years, over 80% of the single family homes, and 90% of the multi-family housing units constructed in the County of Monroe, exclusive of units built by governmental or allied housing units, have been constructed by Plaintiff's members. During the past 15 years, over 80% of the private housing units constructed in the Town of Penfield have been constructed by members of Plaintiff.

FOURTH: Now and at all times hereinafter mentioned, the Defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the Town Code of the Town of Penfield, New

York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the Defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said Defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

FIFTH: Now and at all times here-

inafter mentioned, the Defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the Defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said Defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein, and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said zoning ordianance and as such they par-

ticipated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

SIXTH: Now and at all times hereinafter set forth, the Defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Donald Hare, Lindsey Embrey, and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town, and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.

SEVENTH: Now and at all times hereinafter mentioned, the Defendant Town of Penfield is and was a municipal corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying continguous to the territorial boundaries of the City of Rochester, New York.

EIGHTH: Pursuant to state enabling legislation, the Defendants Gossin, Pallischeck, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York on the 5th day of May, 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which Sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A

and made a part hereof.

NINTH: Said ordinance, both as enacted and/or as administered by the Defendants aforenamed is violative of the Constitution of the United States and/in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

TENTH: That said ordinance as enacted and/or administered by the Defendants or their predecessors in office, has as its purpose and effect, and in fact, effects and propagates exclusionary zoning in said Town, with respect to excluding moderate and low income single family and multiple unit housing, and as such tends to exclude low income and

moderate income persons from the purchase and/or rental of housing in said Town. The result of such exclusionary zoning is to prohibit Plaintiff's members from constructing and offering for sale or rental, housing to all segments of the community which require housing, particularly those persons of low and moderate income.

ELEVENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual Defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custome and usage of the State and has subjected the Plaintiff's members to be deprived of certain rights, privileges

and immunities secured by the Constitution and laws of the United States.

TWELFTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual Defendants, and their predecessors in office, have arbitrarily and capriciously and continuously, for a period of over 15 years last past:

A. Administered the provisions of said zoning ordinance by refusing to grant variances, building permits and by use of special permit procedures and other devices, so as to effect and propagate the exclusionary and discriminatory plan, policy, and/or scheme, heretofore referred to; and

B. Have failed to amend, modify or alter or waive the provisions of said

ordinance, including amending, waiving, altering and/or modifying the provisions of the zoning map, the requirements pertaining to setback, minimum lot size, population density, use density, floor area, utilities, traffic flow, and other requirements, so as to effect and propagate the exclusionary and discriminatory policy plan or scheme hereinabove and herafter referred to; and

C. Refused to grant necessary tax abatement or otherise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with and assist and accommodate applications by Plaintiff's members and others for construction of low and moderate income single family and multiple unit housing in the Town of Penfield; all so as to neglect and

ignore the minimum housing requirements of the population of the Town of Penfield and the metropolitan Rochester area considering the location and movement of local industry, commercial establishments, population, population growth, fluidity and density in the metropolitan Rochester area, and have thereby (a) prevented Plaintiff's members from development, sale and/or rental of housing to all those members of the metropolitan Rochester area who might require housing, and (b) deprived Plaintiffs of substantial business opportunities and profits.

THIRTEENTH: That pursuant to the exclusionary and discriminatory plan, policy and/or scheme heretofore referred to, Defendants have arbitrarily, capriciously and illegally refused Plaintiff's members

and others, legislative and administrative relief from the various provisions of the ordinances, laws and codes of the Town of Penfield heretofore referred to which would have permitted them to proceed with construction for rental or sale of low and moderate income housing, all in violation of the rights of Plaintiff's members and the Constitution and laws of the United States hereinbefore referred to, as a result of which Plaintiff's members have sustained substantial and irreparable harm and damage.

FOURTEENTH: That said ---------- ordinance, scheme, act administration, practices and procedures, are violative of the Ninth and Fourteenth Amendments to the Constitution of the United States in that they deny Plaintiff's members as well as all other citizens of the metro-

politan Rochester area, the inalienable rights retained by them as citizens of the United States as well as due process and equal protection of the law;

FIFTEENTH: That said ordinance and regulation and the enforcement and administration thereof, bear no substantial relationship to the requirements of public health, safety, morals and general welfare of the community at large.

SIXTEENTH: That there is no legal basis under the Constitution and laws of the United States for said ordinace and the actions, activities, plans and schemes hereinbefore set forth.

SEVENTEENTH: That one or more officials of the Town of Penfield have attempted to coerce Plaintiff's members to prevent Plaintiff from bringing this action, and have threatened Plaintiff's

members that if this action were brought, Plaintiff's members would be prevented from doing business in the Town of Penfield and/or would be given great difficulty in obtaining necessary approvals, cooperation and/or appropriate treatment by government officials of said town, which would thus prevent them from carrying out their ordinary and necessary business in due course in said town. As a result of said action, Plaintiff's members are threatened with irreparable harm and damage.

EIGHTEENTH: That by reason of said ordinance and all of the acts, actions, activities on the part of the Defendants and their predecessors in office hereinbefore set forth, Plaintiff's members have been damaged in the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00).

WHEREFORE,Plaintiff respectfully asks this Court for a judgment and Order:

A. Declaring that the housing and land use laws and policies of the Town of Penfield, as embodied in their zoning regulations, building codes, master plan, and all other related ordinances and regulations, and as enacted, enforced and administered by the Defendants to be unlawful, and null and void, as contrary to the statutory Constitution and laws of the United States of America.

B. Enjoining the Defendants and their successors in office from administering and/or enforcing said zoning ordinance, master plan, building code and other regulations.

C. Ordering and directing the Defendants to repeal such laws and enact and administer new laws, ordinances and

regulations, which shall be non-exclusionary in nature, and shall repair and/or alleviate the conditions and effects heretofore complained of.

D. Ordering and directing the Defendants to permit and encourage participation of the Plaintiff and its attorney in the development and completion of said new laws, ordinances and regulations.

E. Ordering and directing Defendants to submit such new laws and regulations to this Courtfor this Court's approval within a reasonable period of time from the date of entry of the Court's Order herein.

F. Granting Plaintiff damages actual or exemplary in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

G. Temporarily and permanently enjoining the Defendants, and all other

officials of the Town of Penfield from interferring with the normal business operations of Plaintiff's members during the pendancy of this action and thereafter, and affirmatively directing Defendants and all other officials of the Town of Penfield to cooperate with and provide all necessary approvals, cooperation and appropriate treatment, to Plaintiff's members in conjunction with their ordinary and usual business conducted in said town.

H. Directing Defendants to pay Plaintiff's reasonable attorneys fees, costs and disbursements of this action.

I. Retaining jurisdiction of this action for a period of time after the adoption of the new ordinances and regulations to ensure equitable and reasonable enforcement thereof, and

J. Granting Plaintiff such other and

further relief as the Court may deem appropriate.

LIEBSCHUTZ, ROSENBLOOM & SAMLOFF
Attorneys for Plaintiffs
Office and Post Office address
101 Powers Building
Rochester, New York 14614
716-546-8240

* * * * * * * * * * *

* * * * * * * * * * * * * * *

Exhibit A

to

Intervenor Complaint,

Copy of Chapter 29 of the Town Code of the Town of Penfield, Sections 29-1 through 29-29 is reproduced as Exhibit A to the original complaint and is omitted here.

* * * * * * * * * * *

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, 265 Castlebar Road, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
LYNN REICHERT, 224 Seneca Parkway, Rochester, New York, 14613, Individually and on behalf of all other persons similarly situated,
VICTOR VINKEY, 134 Nunda Boulevard, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
KATHARINE HARRIS, 108 Garson Avenue, Rochester New York, Individually and on behalf of all other persons similarly situated,
ANDELINO ORTIZ, R.D. 1 Wrights Road, Box 202, Wayland, New York, Individually and on behalf of all other persons similarly situated,
CLARA BROADNAX, 87 Jefferson Avenue, Rochester, New York Individually and on behalf of all other persons similarly situated,
ANGELEA REYES, 378 Scio Street, Rochester, New York, Individually and on behalf of all other

MOTION AND NOTICE of MOTION

Civil Action No. 1972-42

MOTION AND NOTICE OF MOTION

persons similarly situated, ROSA SINKLER, Apartment 5-F, 10 Vienna Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC. 277 Goodman Street, North, Rochester, New York

Plaintiffs

-vs-

IRA SELDIN,Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLD, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW,Chairman, JAMES HARTMENT, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants.

Upon the annexed affidavit, plaintiffs above-named, by their attorneys, Robinson,

MOTION AND NOTICE OF MOTION

Williams, Robinson and Angeloff, move the Court for an Order making the Housing Council in the Monroe County Area, Incorporated, a party plaintiff herein and directing the issuance of service of process upon it, and for grounds therefor shows:

1. This an action for declaratory and injunctive releif and for money damages;

2. This action challenges the legality and constitutionality of certain actions of the defendants herein, including the adoption and enforcement of certain zoning ordinances of the Town of Penfield, New York;

3. Housing Council in the Monroe County Area, Incorporated, (hereinafter "Housing Council") is a non-profit corporation organized pursuant to the laws of the State of New York, and its principal

office is located in the City of Rochester, New York; therefore, Housing Council is subject to the jurisdiction of this Court as to service of process and can be made a party plaintiff herein without depriving the Court of jurisdiction;

4. Housing Council's claim in this action arose out of the same transactions and occurrences, and raises the same questions of law and fact, as are already before this Court;

5. That the interests of Housing Council are or may not be adequately represented by the parties to this action.

PLEASE TAKE NOTICE that the within Motion will be heard at the U.S. District Courthouse, Rochester, New York, on the 12th day of June, 1972 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard.

/s/ Emmelyn Logan-Baldwin
Robinson, Williams,
Robinson and Angeloff

TO: HARRIS, BEACH AND WILCOX
Counsel to Andrew V. Siracuse, Esq.
Attorney for Defendants

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

JOHN C. MITCHELL, being duly sworn, deposes and says:

1. He is the Executive Director of the Housing Council in the Monroe County Area, Incorporated (hereinafter "housing Council"), and is familiar with its history, composition and purpose.

2. Housing Council is a not-for-profit corporation organized in 1971 pursuant to the laws of the State of New York, and maintains its principal office at 121 North Fitzhugh Street, Rochester,

New York.

3. Housing Council was organized in response to a recommendation contained in a 1970 study prepared by the Rochester Center for Governmental and Community Research and entitled "Housing in Monroe County, New York". This study was prepared for the Metropolitan Housing Committee, which was appointed jointly by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The study recommended, inter alia, that a housing council be established, composed of representatives of relevant agencies, institutions and groups interested in housing in order to channel the fragmented and uncoordinated housing efforts in the community into meaningful action.

4. Housing Council's purposes are

set out in Article II of its Constitution, which reads as follows:

> The Corporation shall be organized and operated exclusively for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of **combating** community deterioration, eliminating racial and economic prejudice and discrimination in housing and lessening the burdens of government in Monroe County are of New York by:
>
> Section A. Promoting studies of and giving leadership to community planning concerning the problems of:
> 1. eliminating racial and economic discrimination in housing;
> 2. reversing community deterioration;
> 3. increasing the supply of decent safe and sanitary housing in a quality living environment throughout the County and Metropolitan Rochester area for all persons, especially those with low and moderate income;
>
> Section B. Seeking:
> 1. to coordinate the efforts of governmental, public and private organizations which plan to engage in or are presently engaged in construction, rehabiliation or development of adequate housing in the Monroe County area for all persons, especially those with low and moderate incomes and;
>
> 2. to assure that such organizations consider methods of pursuing their housing activities which will lead to elimination of racial and economic discrimination and will tend to reverse community deterioration in the Monroe County area; and
>
> SectionC. Providing or facilitating technical assistance to governmental, public and private organizations which plan to engage in or are presently engaged in planning, constructing, rehabilitating, or developing adequate housing for all persons, especially those with low and moderate incomes; particularly concerning methods of eliminating racial and economic discrimination and reversing community deterioration.

5. The Housing Council's membership is comprised of some seventy-one (71) public and private organizations having an interest in housing. A copy of the charter membership list is annexed hereto as Exhibit "1".

6. At least seventeen (17) of the charter member groups have been involved, are involved, or hope to be involved directly in the development and construction of low and middle income housing; each such organization is indicated on Exhibit "1" by a check mark before its name.

7. Upon information and belief, at least one such group, viz. Penfield Better Homes Corporation, is and has been actively attempting to develop moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action.

8. Several of the charter member groups, including the Monroe County Department of Social Services and City of Rochester's Department of Urban Renewal

and Economic Development,and Urban Renewal Agency, are government agencies which have a direct concern with and interest in the provision of low and middle income housing in the County of Monroe and the City of Rochester.

9. The large majority of the charter member groups themselves have membership which are made up primarily of low and moderate income whites and non-whites, and therefore directly represent the interests of such people.

10. Because of the interests of these constituent groups, Housing Council has a special interest in this litigation and is in a unique position to represent the interest of its members.

11. Housing Council has no objection to being made a party plaintiff in this action.

AFFIDAVIT, JOHN C. MITCHELL

/s/ John C. Mitchell
John C. Mitchell

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in
Printing

EXHIBIT "1"

Page Seventeen

HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC.

CHARTER MEMBER LIST

1. Action for a Better Community, Inc. (ABC)
2. American Association of University Women, Rochester, New York Branch
3. Asbury First United Methodist Church Housing Committee
4. Association for the Blind of Rochester and Monroe County, Inc.
5. Better Rochester Living, Inc.
6. Bishop Sheen Housing Foundation
7. Brockport Action Task Force on Housing (BATH)
8. The Build Your Own House Club
9. Center for Community Issues Research
10. The Church of the Incarnation Episcopal, Vestry
11. Church Women United in Rochester and Vicinity, Inc.
12. Citizens Planning Council of Rochester & Monroe County, Inc. (CPC)
13. Community Interests Inc.
14. Community Volunteers of Rochester, Incorporated
15. Cooperative Extension Association of Monroe County
16. FIGHT
17. Four Downtown Churches of Rochester, New York, Housing Department of ACCT
18. Frederick Douglass League
19. Genesee Rapids Neighborhood Association
20. Genesee Settlement House
21. Greece Residents Organized to Act (GRO-Act)

EXHIBIT "1"

22. Holy Name of Jesus Parish, Human Development Task Force
23. Housing Opportunity Program Enlistment Incorporated (H.O.P.E.)
24. I.C. Housing Development Fund Company, Inc.
25. The Junior League of Rochester, Inc.
26. Ladies Association for Community Enrichment (L.A.C.E.)
27. Lake Avenue Friendship Corporation
28. League of Women Voters of the Rochester Metropolitan Area
29. Metro-Act of Rochester, Inc.
30. Model Neighborhood Council
31. Monroe County Bar Legal Assistance Corp.
32. Monroe County Department of Social Services
33. Monroe County Planning Council
34. Montgomery Neighborhood Center, Inc.
35. 19th Ward Community Association, Inc.
36. National Council of Jewish Women, Rochester Section
37. New Rochester
38. North East Area Development, Inc. (NEAD)
39. Northeast Property Upgrading Association (NEPUA)
40. Northeast District Council, Inc. (N.E.D.C.)
41. Northwest Housing Task Force
42. Office of Human Development
43. Olean Townhouses
44. Penfield Action for a Creative Tomorrow (PACT)
45. Penfield Better Homes Corporation
46. Penfield Christian Landlords, Inc.
47. Priests Association of Rochester, Social Action Committee

EXHIBIT "1"

48. Rochester Area Committee for Open Housing (RACOH)
49. Rochester Area Council of Churches Development, Inc. and Rochester Area Council of Churches Housing Development Fund Co. Inc.
50. Rochester Jaycees
51. Rochester Housing Authority (RHA)
52. Rochester Management, Inc.
53. Rochester Neighbors, Inc.
54. Rochester Soul Christian Leadership, Inc.
55. Rochester Urban Renewal Agency and City of Rochester, Dept. Urban Renewal & Econ. Development
56. Rochester United Settlement Houses (RUSH), Housing Development Fund Company, Inc. (Harris Park Project)
57. Senior Citizens Action Council Inc. of Monroe County, State of New York (SCAC)
58. Sisters of St. Joseph, Social Concerns Committee
59. South East Area Coalition, Inc. (SEAC)
60. South Area Welfare Rights Group (SEWRG)
61. South Side Seniors (Citizens)
62. St. Thomas Episcopal Church, Christian Social Action (STECCSA)
63. Teen League of Rochester (TL)
64. Temple B'Rith Kodesh, Social Action Committee
65. Third Presbyterian Church, Session
66. Unitarian Housing Committee (First Unitarian Church)
67. WEDGE
68. Webster Council of Churches Housing Committee
69. Webster Human Relations Council
70. Western Monroe Community Project, Inc.
71. Young Womens' Christian Association of Rochester and Monroe County (YWCA)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, et al Plaintiffs vs. IRA SELDIN, et al, and THE TOWN OF PENFIELD Defendants	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

ROBERT J. WARTH, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 265 Castlebar Road, Rochester, New York. I am the duly elected president of plaintiff Metro-Act of Rochester, Inc. for the year June, 1971 to June, 1972. I make this affidavit in opposition to the defendants' motion to dismiss Metro-Act of Rochester, Inc. as a party plaintiff in

the above noted lawsuit.

2. Metro-Act of Rochester, Inc. is a non-profit organization organized pursuant to the membership corporation law of the state of New York. Among its stated purposes are 1) to achieve democracy for all irrespective of race, religion or national origin; 2) to encourage the Rochester community to provide better housing, better education, greater employment opportunities and to secure human and civil rights for all its residents.

3. Metro-Act was found ed in 1965 as Friends of Fight, Inc. The 1964 race riots in Rochester had vividly brought home to the Rochester metropolitan community the dangers of policies and practices which result in an inner city composed of a concentrated black and other minority population who have no other choices in living except in squalid housing, sending their

children to inferior schools and educational facilities, being subjected to reduced employment opportunities and inferior community services. Following the Rochester riots, the black community in Rochester formed a special action group called FIGHT; Friends of Fight, Inc. (now Metro-Act) was originally composed of white Rochesterians who formed to organize support from the white community of the programs and efforts of FIGHT in the black community. In December of 1968, Friends of Fight became Metro-Act of Rochester, Inc. with the role of Metro-Act being expanded to deal with issues beyond those with which FIGHT and the black community might be concerned. Metro-Act of Rochester, Inc. continues to work in ad hoc coalitions with FIGHT and other social action groups on specific issues.

4. Membership of Metro-Act is presently composed of approximately 350 individuals. The Metro-Act members live in all sections of the Rochester metropolitan area; about 9% of the Metro-Act members live in the Townof Penfield. Members are persons who are dedicated to abhieving social justice and an open society for persons of all races and economic levels.

5.The Metro-Act membership works through task forces to deal with problems of pressing concern to the membership and to the Rochester metropolitan area. Presently, active issues with Metro-Act include housing, environment, tax reform, media responsibility, national priorities, individual freedoms, Community Chest, education and membership. Task forces and committees are established from time to time

as particular needs arise.

6. Metro-Act is working for open housing in the suburbs because, in part, only by providing maximum choice in housing can Metro-Act members and their children be spared an eventual repeat of ghetto confrontations and riots. Metro-Act supports quality, integrated education. Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups. Metro-Act is working for tax reform; its membership are the people who must bear much of the burden of increased taxes resulting from large amounts of tax exempt property. Metro-Act's concern over national priorities in opposition to the Southeast Asian war is based partly on the membership's own tax money being used for causes they consider

destructive, unworthy, or of low priority. Metro-Act's work in the area of media responsibility in reporting is based partly on the membership's own self interest. It wants to avoid thought conditioning by the media and avoid the making of judgments from misrepresentation of news. Metro-Act is working for protection of civil liberties and fair treatment of minorities because the loss of one group's freedom threatens each individual's freedom.

7. Since it was organized in late 1965, Metro-Act (originally Friends of Fight) has been involved in working for better housing policies and has been advocating zoning changes which would make decent housing available to all persons, regardless of race or income level. In 1966, Metro-Act compiled a fact sheet outlining the population changes in Rochester

center city and the urgent need for the construction of low income housing in Rochester. The study, attached hereto and made a part hereof as Exhibit A, demonstrated that in terms of relative population, Rochester was far behind other upstate New York cities in providing public housing.

8. The study of need for low income housing was followed by the publication of a survey of land in the City of Rochester owned by the City of Rochester which would be suitable for new housing. The study included a review of land suitability, the availability of sewer and transportation facilities. Copies of the study and relevant correspondence and news articles are attached hereto and made a part hereof as Exhibits B,C and D. At this same time Metro-Act joined as a member of a coalition

to press for zoning changes in the City of Rochester. The coalition was composed of approximately forty (40) Rochester organizations.

In response to a growing awareness that the City of Rochester could not solve its housing problem in isolation from the rest of the county of Monroe, Metro-Act along with its member organizations, at that time, expanded its efforts to focus on the need for the suburban communities of the Rochester metropolitan area, Monroe County, to provide low income housing. In February of 1969, Metro-Act representatives met with various town supervisors and submitted a proposal, Exhibit E attached hereto and made a part hereof, that the suburban towns become involved in a rent subsidy leasing program under Section 23 of the

United States Housing Act of 1937. Low income families could have been benefited by the involvement of the suburban towns in such a program and low income families would thereby have had a greater choice of housing accommodations made available to them in the Rochester metropolitan area.

9. In April of 1970 the Metropolitan Housing Committee, chaired by the late Joseph C. Wilson published its report, Housing in Monroe County, New York. (The summary report is attached hereto and made a part hereof as Exhibit F.) One of the major recommendations of this report was the petitioning of the Rochester City Council, the Monroe County Legislature and the Town and Village Boards for their express public support and adoption of a public policy establishing the 1970's as the decade during which decent housing and

a suitable living environment would be provided to meet the needs of every individual and family in the Rochester-Monroe County area.

10. In response to the Metropolitan Housing Committee's recommendation for a housing council (see page 27 [A 309] of the Summary Report) composed of representatives from interested agencies, institutions, and groups (including, of course, non-profit housing corporations) Metro-Act of Rochester pressed for the formation of such a group. The Housing Council in Monroe County Area, Inc. was formed in summer of 1971 and is presently composed of the organizations and bodies set forth in Exhibit G attached hereto and made a part hereof.

11. Further, Metro-Act of Rochester, Inc. initiated the formation of the

Political Action Committee on the Housing Council. This committee has pressed the Monroe County Legislature for the county to take the responsibility for housing the county. Correspondence in connection with this effort by Metro-Act and the resulting resolutions of the Monroe County Legislature are attached hereto and made a part hereof as Exhibits H, I, J, K, L, M & N. Through the pressures of the Housing Council Political Action Committee on housing, the Rochester City Council as well as the Monroe County Legislature recognized the report of the Metropolitan Housing Committee , "Housing in Monroe County, New York", and the Rochester City Council and Monroe County Legislature respectively pledged their continuing efforts to meet the report's objectives and goals. (Attached hereto and made a

part hereof as Exhibits O through P are copies of release and resolution in connection with the Rochester City Council's recognition of the Metropolitan Housing Committee report.)

12. The report of the Metropolitan Housing Committee , Housing in Monroe County, New York, confirmed for the Rochester metropolitan area the pattern of concentration of non-white population in the Rochester center city and the disbursement of the white, upper class population in the Rochester suburban towns. In 1964, for example, 96.6% of all non-whites lived in Rochester (page 10 [A 276] of Summary Report). The report went on to note that while there is great need for low and moderate income housing,

"The community is left with a special category of housing demand: a demand for equal housing opportunities for non-whites. The complete rejection by the suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies - as well as individual citizens - have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles to blocking the construction of low moderate income housing where it is needed."

13. The Metropolitan Housing Committee specifically found that the sites available for the construction of low or moderate income housing were available in the towns. (Summary Report, page 19/ [A 294]) At the same time, the Metropolitan Housing Committee found insufficient the present land use control mechanisms employed by suburban towns. (Summary Report, page 17[A 290])

14. Even before actually undertaking this serious and tremendous step of initiating a lawsuit against the Town of Penfield, members of the Metro Act Housing Task Force and officers of Metro Act spoke specifically with Penfield town leaders of the Metro Act concern for the practices, policies and laws which lead to the fact of exclusionary zoning. All during the month of December 1971 and early January 1972, various discussions were conducted between town leaders and Metro Act members. The discussions centered on the precise complaints the Metro Act Task Force members had with the Town of Penfield zoning ordinance with regard to its effect on the construction of low, moderate income housing in the Town of Penfield. In early January, Metro Act members met with town leaders personally. Town leaders suggested that Metro Act

members submit a concrete proposal for change in the Town of Penfield; Metro Act members accepted this suggestion and submitted a proposal,as a basis for discussion, a copy of which is attached hereto and made a part hereof as Exhibit Q. A date was set for a **meeting** with the full town board of Penfield for January 18, 1972. At the request of the Town of Penfield officials, the January 18th meeting was cancelled. I, as Metro Act president, thereafter, talked with Irene Gossin, chairman of the Penfield Town Board, about arranging for a new meeting date and time with the Penfield Town Board to discuss approval and implementation of Metro Act's suggestions. I suggested a meeting at the town board's convenience at any time and at any place. Chairman

Gossin, however, could only suggest a date one month in advance as the earliest meeting date. After making such a tremendous effort to discuss the Penfield housing problems with the Town Board officials and meeting with an attitude of unwillingness on the part of the Town of Penfield officials to consider Metro Act's proposals or even to meet and discuss the proposals, Metro Act members had the clear impression that the objective of the Town of Penfield was to delay indefinitely any real meeting with Metro Act members or a real consideration of the MetroAct proposal. Under the circumstances, there was no other alternative than to initiate this lawsuit.

/s/Robert J. Warth
Robert J. Warth

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in printing

EXHIBIT A

FACTS ABOUT ROCHESTER HOUSING

(Census figures from 1960 U.S. Census and 1964 Monroe County Special Census)

Rochester has New York State's third largest concentration of Non-whites. Negroes in Rochester: 7,845, in 1950, approximately 35,000 in 1965. About eighty per cent (80%) live in the Third and Seventh Wards.

Population changes in Third and Seventh Wards -- 1960 - 1964

Ward	Non-white in 1960	Non-white in 1964	%change	White in 1960	White in 1964	% change
Third	10,596	14,283	+34.8	12,894	8,129	-37.0
7th	9,026	10,896	+20.7	15,039	11,216	-25.4
TOTAL	19,622	25,179	+28.3	27,933	19,345	-30.7

EXHIBIT A 196

EXHIBIT A

Housing in Third and Seventh Wards in 1960

Ward	No. of Units	Deteriorating and Dilapidated	%Deteriorating and Dilapidated	Shared bath or no bath	Units with more than one person per room
Third	8,120	2,516	31.0	1,158	949
Seventh	7,307	2,942	40.3	474	1,192
TOTAL	15,427	5,458	35.4	1,632	2,141

EXHIBIT A 197

Rentals for non-whites (example)

Census Tract 1964 (Third Ward) 1960 medium gross rent was $68 for whites and $94 for non-whites, or about a 40% increase for non-whites.

EXHIBIT A

Low-income Housing Units Voted or Existing as of 1964

City	1960 Population	No. of Units
Buffalo	532,759	6,787
Syracuse	216,038	2,116
Albany	129,726	1,200
Niagara Falls	102,394	1,118
Utica	100,410	842
Schnectady	81,682	965
Rochester	318,611	668*

A 1962 survey published by the City estimated conservatively that 2,290 families needed low rent, public housing at that time. According to census figures, the inner-city non-white population is growing at a rate of about 2,000 persons a year.

Since 1960, Rochester has demolished over 400 inner-city dwellings through highway construction alone. Present Urban Renewal plans for the Third Ward will involve relocation of another 850 families. Urban Renewal plans being drawn up for the Court Street area and for the Seventh Ward will necessitate relocating many hundreds of additional families within the next few years.

*As of this date, Rochester has built only 392 low-income units. Present plans of the Rochester Housing Authority call for 600 additional units. Of this 600, 127 are to be rehabilited existing units and 197 are Senior Citizens Units. This leaves only 276 new low-income family units now "planned". They will be as follows:

Edith Doran	35	Family Units
45 Duplexes	90	" " (There will be bids in the next couple of weeks.)
Bay Street	33	"
Atlantic Avenue	18	"
Cottage Street	15	"
Hartford Street Area	33	"
Federal Street	6	"
Third Ward	46	"(Scattered on 8-12 sites)
	276	

EXHIBIT A

Total low-income family housing built and planned in Rochester:

Built.....392 units

Planned.....276 units
668

Groups Presently Active

Better Rochester Living -- A non-profit corporation organized to work with families potentially able to buy their own homes. As of May, 1965, 97 applications: 11 dropped for various reasons, 60 preliminary screening and financial counselling, 12 looking for houses, 14 have found houses and are in various stages of financing, etc. (none yet occupied).

Community Interests, Inc. -- In two years over forty (40) families have been helped toward home ownership with loans averaging $800 made to six (6) families.

Family Housing Sponsorship Plan -- Twenty-two (22) large families being sponsored presently by several local churches and groups (mostly through the work of the Rochester Area Council of Churches).

RUSH(Rochester Urban Settlement Housing) -- The five settlements have formed a corporation to build scattered low-middle income housing under 221d3 of the Federal Housing Act. They hope to build 250 units.

Exhibit B

Attachment #3

HOUSING SITE PROPOSAL

Friends of FIGHT, Inc.

Low-income family housing remains a pressing need in the city of Rochester, Estimates of the number of units presently required vary from 15,000 to 30,000. By 1975, proposed community renewal will add 10,000 units or more to this total. The number of public housing units actually built in Rochester is only 447, although more are in a funding or planning stage.
Even with all those presently planned by the Rochester Housing Authority, Rochester ranks seventh in upstate New York for the number of low-income units built -- though it is second in population among upstate cities.

EXHIBIT B

Housing is one of the key issues that continue to foster resentment in the ghetto. In the face of Rochester's present lack of achievement, the black community cannot be expected to wait patiently while those in power say that things are getting better or explain the problems associated with the building of housing.

A massive attack on the housing problems of our community can be justified on moral grounds and on the basis of the city's self-interest. Choose one justification or both, but action must come now.

Friends of FIGHT has studied the availability of housing sites. It has been claimed that land is not available This is not true. City owned land is available which can be used for low-

EXHIBIT B

income housing. We focus attention particularly on four pieces of city owned property, each of which is well suited as a potential location for family living.

Friends of FIGHT calls upon the city administration, and specifically the City Council, to do the following:

1). Designate these four properties as sites for low-income family housing.
2). Enact the required zoning changes.
3). Assert aggressive and creative leadership in dealing with the administrative bottlenecks associated with getting construction started.

On the following pages are maps showing the location of publicly owned land. The

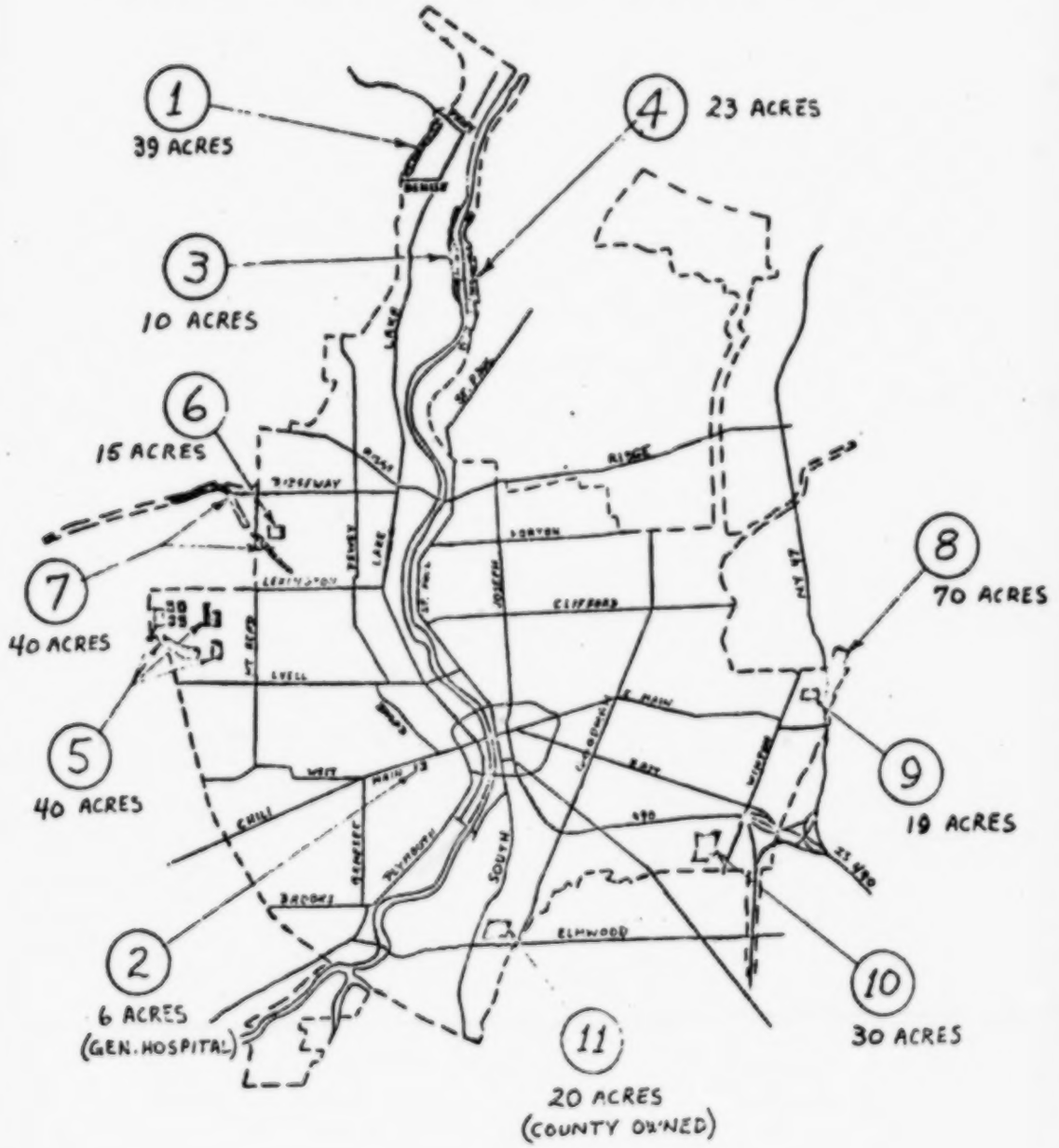
EXHIBIT B

first map shows most of the large blocks of city owned land. Subsequent enlargements show in detail the four sites at issue; attached commentary provides information about factors relative to desirability for housing.

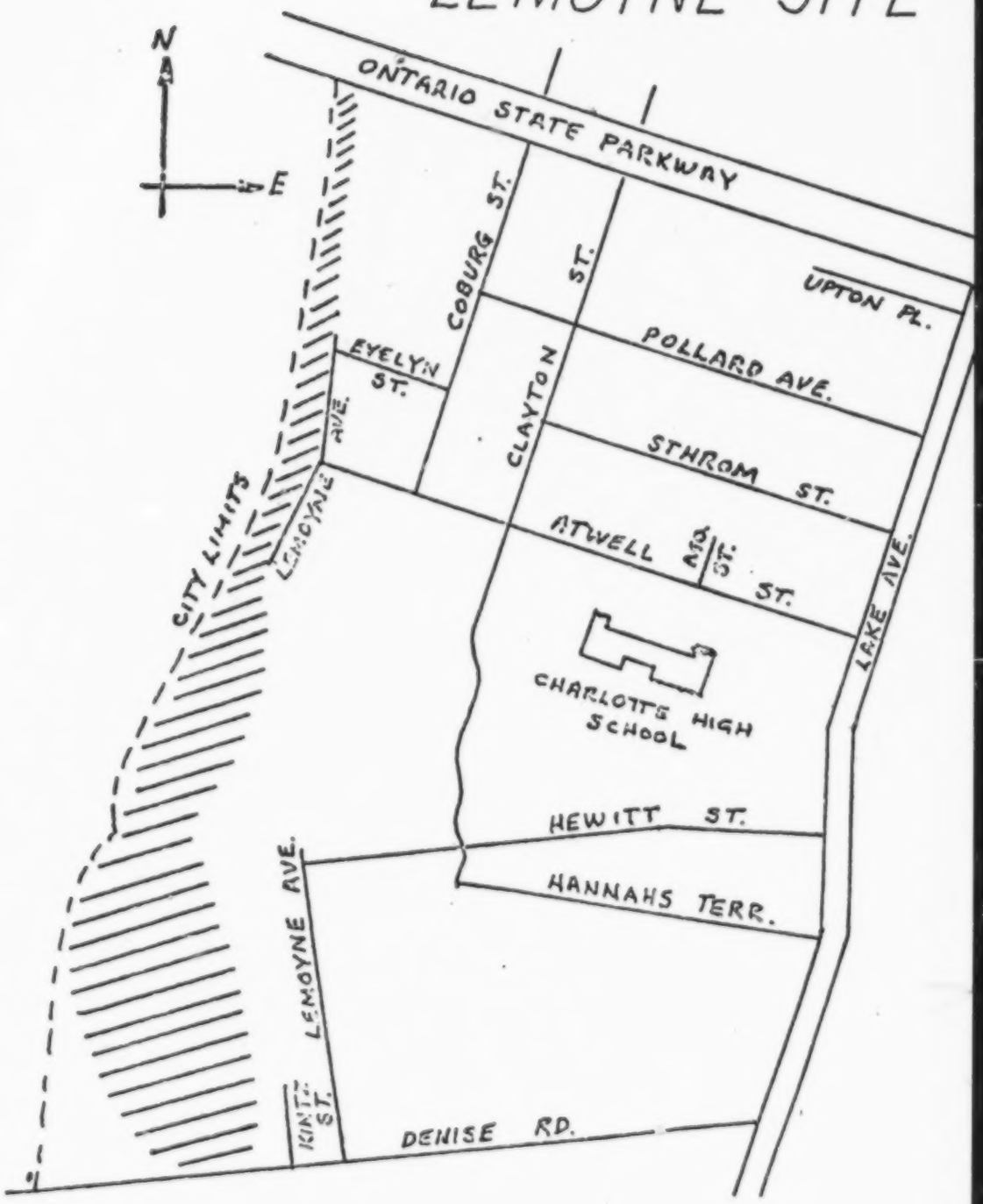
EXHIBIT B

PUBLIC HOUSING SITES.

PART 1. CITY OWNED VACANT LAND



LEMOYNE SITE



SITE # 1 LEMOYNE AVE.

Approximately 39 acres, close to Charlotte High School playing fields, bordering on the city limits from the Ontario Expressway on the north, nearly to Denise Road on the south.
Suitable for up to 400 units at moderate density.

Schools:

School #38; (K-6); had an enrollment of 740 as of 10/6/67; 10.5% non-white.
School #42 is next nearest.
Upper grades served by Charlotte High School.

Transportation:

Near major roads and Ontario Expressway.
Lake Ave. has major bus route.

Shopping:

Adequate shopping facilities are located at Lake and Stutson, less than one mile from the site.

EXHIBIT B

Recreation:

The site includes sufficient acreage for neighborhood recreation facilities, and is adjacent to Charlotte High School fields.

Zoning and Proposed Land Use:

Presently zoned R-1 south of Hewitt St., R-2 north of Hewitt St.; the Comprehensive Master Plan proposes development for predominantly single family housing.

Sewage Facilities:

Major sewer lines available on Lake Ave. .

EXHIBIT B

LA GRANGE SITE

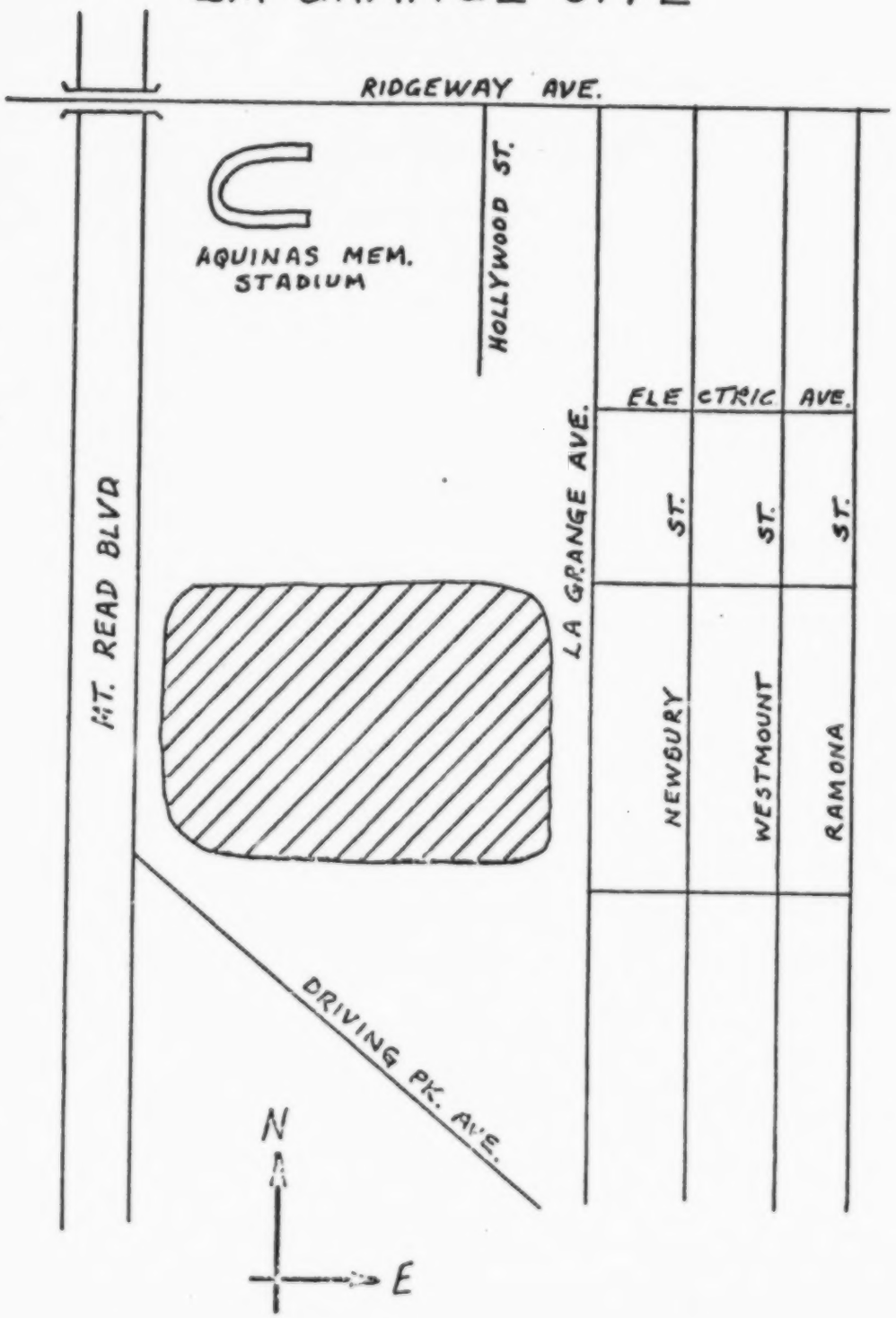


EXHIBIT B

SITE # 6 LAGRANGE AVE.

Approximately 15 acres between LaGrange Ave. and Mt. Read Blvd., near Aquinas Stadium and playing fields. The site is wooded and many of the trees could be saved to make a beautifully landscaped area.

Suitable for 200-300 units at moderate density.

Schools:

School #40, on LaGrange Ave. is very close; (K-6); had an enrollment of 503 as of 10/6/67; 3.2% non-white. (Advocates of "integration in schools through integration in housing" should be delighted.)
Schools #34 and #7 (new) are next nearest.
Upper grades are served by John Marshall High School.

Transportation:

Near major roads and proposed Greece Expressway.
Bus service is available on Ridgeway Ave.

EXHIBIT B

Shopping:

Adequate shopping facilities are located on Dewey Ave. at Flower City Park (less than one mile) and at Driving Park Ave. (just over one mile).

Recreation:

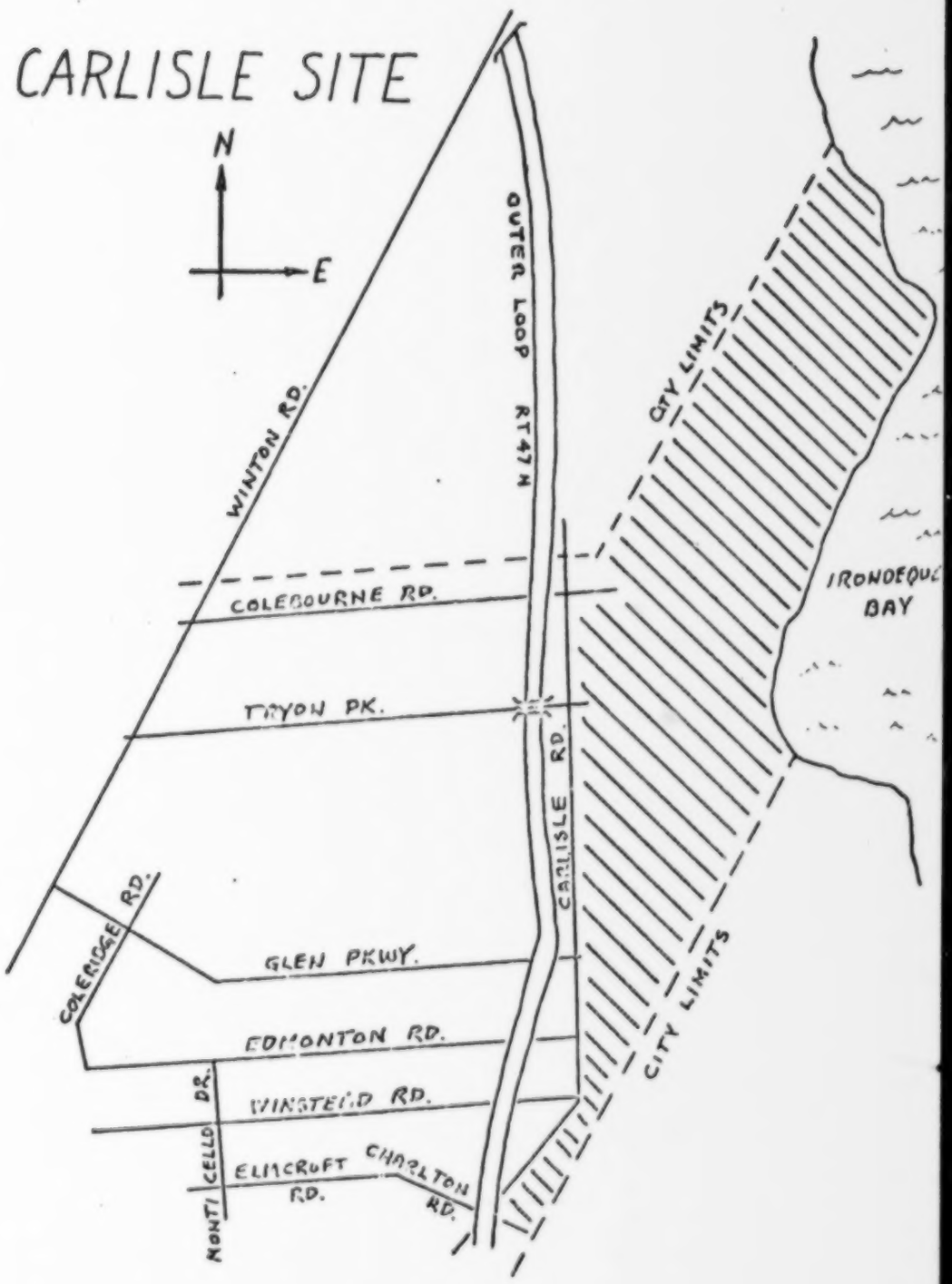
Adjacent to Aquinas playing fields and near School #40 recreation area.

Zoning and Proposed Land Use:

Presently zoned Industrial; the Comprehensive Master Plan proposes development for industry.

Sewage Facilities:

Sewer lines are available along LaGrange Ave.



SITE #8 CARLISLE RD.

This total area is over 50 acres, and much of it could be used for housing. Adjacent to the Sea Breeze Expressway and Carlisle Road, and bounded on three sides by city limits or Irondequoit Bay, the site would offer an excellent opportunity to combine housing with park facilities.

Suitable for 400-500 units at moderate density.

Schools:

School #52 on Farmington Rd. is close; (K-7); had an enrollment of 564 as of 10/6/67; 1.5% non-white. (Like School #40 a highly segregated white school in which housing could produce better racial balance.)
Schools #46 or #28 (scheduled for replacement) are next nearest.
Upper grades are served by East High School.

EXHIBIT B

Transportation:

Near bus lines on Browncroft and Winton Rd.
Near Browncroft exit of Sea Breeze Expressway.

Shopping:

Adequate shopping facilities are located on Winton Rd. at Browncroft, less than one mile from the site.

Recreation:

Adjacent to proposed development of Tryon Park (see Comprehensive Master Plan p. 113); the site affords an excellent opportunity to develop housing and park facilities at the same time.

Zoning and Proposed Land Use:

Presently zoned R-1; the Comprehensive Master Plan proposes development as park land, but shows proposed use of only ten acres by 1980.

Sewage Facilities:

A sanitary sewer pumping station is nearby.

EXHIBIT B

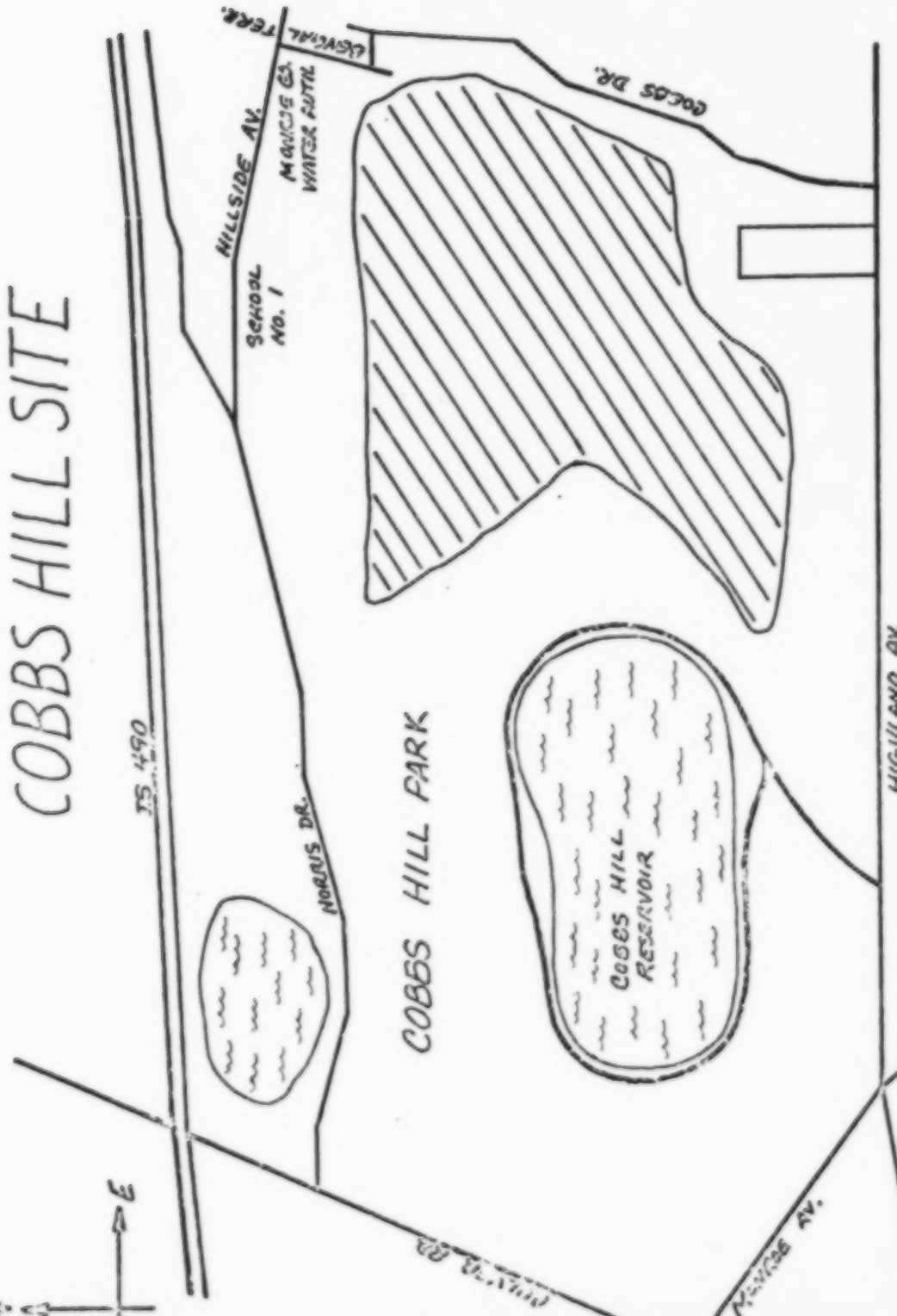


EXHIBIT B

SITE # 10 COBBS HILL

Approximately 30 acres, this site is close to Cobbs Hill Park, and east of the reservoir. The area is wooded and with proper planning could be attractively landscaped.

Suitable for 400 units at moderate density.

Schools:

School #1 on Hillside is near the site; (K-7); had an enrollment of 451 as of 10/6/67; 21.4% non-white due to 96 open enrollment students.
Schools #25 or #28 (scheduled for replacement) are next nearest.
Upper grades are served by Monroe High School.

Transportation:

Near major bus lines and major roads.

Shopping:

Adequate shopping facilities are located on East Ave. at Winton Rd., less than one mile from the site.

EXHIBIT B

Recreation:

Adjacent to Cobbs Hill Park and near School #1 playground.

Zoning and Proposed Land Use:

Presently zoned R-1; the Comprehensive Master Plan proposes development as park land, but shows no planned development up to 1980.

Sewage Facilities:

Sewers are available on Highland Ave.

Exhibit C
Attachment #4

City of Rochester, New York

Office of the City Manager

July 5, 1968

TO THE COUNCIL:

Subject: Friends of FIGHT, Inc., Housing Proposals

Gentlemen:

Friends of FIGHT, Inc., has submitted proposals for housing to the members of the Council and the City Administration. The proposals have had preliminary review by City staff and the Executive Director of the Rochester Housing Authority.

We are interested in the proposals of any groups of responsible citizens concerned with the problems of housing in our community. We have worked closely with a number of such organizations, including the Catholic Interracial Council, the incorporators of the RUSH Corporation, the Council of Churches and others. Many of them, including FIGHT.itself, have submitted specific development plans for consideration by and assistance from the City government. We have cooperated and we will continue to do so.

EXHIBIT C

It must be clearly understood that it is the responsibility of the Rochester Housing Authority, not the Council, to recommend sites for the location of low-rent public housing. The Housing Authority, however, has already used up its reservation of funds for 1,000 units of low-rent public housing, and it has more than 500 units in the pipe-line awaiting an additional reservation of funds from the Federal government. The Authority is working on an application which, if approved, will reserve funds for a total of 2,000 or more units. Undoubtedly the Authority will want to review in detail the proposals of Friends of FIGHT,just as it examines proposals of other groups which have presented their proposals to the Authority, when Federal approvals are obtained.

The task of the Authority, at this point in time, is not to ascertain the validity of the four specific sites urged for low-rent public housing by Friends of FIGHT. It is, rather, to complete its commitment of 1,000 units and to get a new reservation for 2,000 more. When that reservation is in hand, I am confident the Authority will move quickly to review the four sites and the others proposed by other groups, corporations and individuals.

The Authority, especially since the present Executive Director assumed his position, has moved as rapidly as legal, economic and other restrictions permitted to provide housing. The status of the Authority's

EXHIBIT C

program, reported to me by Mr. Robert Sipprell, the Executive Director, is as follows:

In management and occupancy

Kennedy town houses	35	units
Hanover Houses	392	
Kennedy Tower	97	
Danforth Tower	100	
Single-family houses	24	
Two-family houses	32	
Four family houses	4	
	884	884 units

Under construction

Duplex houses	28	
Fairfield Village	36	
Atlantic Apartments	24	
Bay Street town houses	40	
	128	128

New construction approved with funds allocated

Town houses, Bond and Hamilton Streets	10	
Danforth Tower East	100	
Town houses, Edinburgh Street	3	
Duplex houses	6	
Town Houses, Hudson Avenue	72	
	191	191

EXHIBIT C

Purchases approved with funds allocated

Elmdorf Apartments	20	
West Park Apartments	57	
Parliament Arms Apartments	52	
Parkside Apartments	22	
Single-family houses	32	
	183	183

Development program submitted

Single-family houses	100	100

In negotiation

Apartment project	90	
Duplex houses	14	
Single-family and town houses	80	
	184	184

Reserved for Third Ward scattered sites

	54	54
Total		1,524

The total exceeds the Authority's present allocation. The Authority, in addition to those listed above, has approximately 100 units under lease from private or non-profit owners, with 100 or more to be taken under lease by October of this year.

The Authority also has received proposals from builders, developers or both for more than 100 units of new construction on vacant scattered sites, plus proposals for

purchase of existing apartments totaling more than 200 units in various locations, all of which cannot be acted upon until a new program reservation is obtained from the Federal government. All such proposals are for locations outside the central core of the City.

The Council must consider certain standards in its evaluation of sites recommended by the Authority, criteria which I am sure the Authority also employs. These may be described as follows:

1. What is the effect of the housing proposed on the sites on the total development plan of the City? Despite the priority which low- and moderate-rent housing has in our planning, the City has to be concerned as well with its general objective of well-balanced development in this City. This means that there must be commercial, industrial and residential development; provision for the recreational and cultural growth that make a City attractive to all income groups, not just the poor.

2. What is the effect of the large concentrations of low-rent housing proposed by Friends of FIGHT, Inc., on the prospective occupants of such housing and the larger neighborhoods in which they would be located? Clusters of up to 400

low-rent housing units in any location in the City have too many undesirable effects. Our objective continues to be small numbers of units on any one site.

3. Can low-cost housing be built on a site within the severe cost limitations that govern the Federally-assisted program of the Rochester Housing Authority ? If topography, sewer and water and other costs are unmanageable, the site suggested, whatever its other features, must be discarded.

A preliminary examination of the Friends of FIGHT proposals discloses that they would take land in one of the few remaining natural recreation areas of the City, Cobbs Hill, and assign it to housing use. Another site would involve the taking of scarce industrially-zoned land. Still another would remove land selected for future recreational development and is further limited by severe grade problems that would make low-cost housing development prohibitively expensive.

While it is premature, because of the absence of a new Federal reservation of funds, to burden the Authority with the results of detailed reports based on analysis by City engineering, planning and other staff personnel, I am prepared to direct that such studies be undertaken and presented to the Authority when the Authority wants the in-

formation.

In the meantime, it seems to me that the Friends of FIGHT could be of great assistance to its companion organization, FIGHT, which is planning to develop the old General Hospital site on Main Street West for public housing. It could provide, also, through the large percentage of its membership that lives outside the City, the impetus for the construction of low-and moderate-rent housing in the Towns of Monroe County. Their efforts, addressed to their representatives on their Town Boards, might help ease the problems of a City which thus far has made the only effort in this metropolitan area to meet community housing needs, which provides tax exemption for a quantity of public and moderate-rent housing projects and which continues to underwrite, through tax exemptions, the facilities and services supplied by community-based agencies to our low-and middle-income population.

Respectfully,

/s/ S. Scher

Seymour Scher
City Manager

SS:j

TO THE COUNCIL: August 23, 1968

Re: The City Manager's Report on Friends of FIGHT Housing Proposal.

Dear Councilman:

The City Manager saw fit to devote only one paragraph of his three and one quarter page report to the sites involved in the Friends of FIGHT proposal. Not wishing to commit the same kind of oversight, we will comment on his report as it was set forth. We believe that the issue of adequate housing for Rochester citizens is important enough to deserve more than an apology for the status quo.

First, the City Manager indicates that "it is the responsibility of the Rochester Housing Authority, not the Council, to recommend sites for the location of low rent housing." The Council has not been asked to recommend -- Friends of FIGHT has recommended the sites. The City Council has been asked to designate the sites, as they must even if the Housing Authority recommends. The implication is that City Council cannot or should not listen to recommendations from citizens' groups, but only from city staff. This raises the whole question of who makes decisions: the people of Rochester and their elected representatives, or those employed in

various staff positions. If thousands of concerned citizens had been satisfied with the record of the Housing Authority and the City Administration, the Friends of FIGHT proposal would not have been necessary.

Second, the City Manager suggests that because the current federal reservation of funds is expended, no consideration can be given to additional potential sites. If this procedure is followed, valuable time will be lost -- not only now, but each time a new application must be processed. It would seem, especially since designation is a preliminary step which costs no money, that a far more expeditious approach would be to anticipate funding with land designated, plans in the works, etc. so that construction could begin immediately. In addition, since leasing funds are available, it is at least feasible to consider private development with leasing agreements; the Friends of FIGHT proposal nowhere said that the Housing Authority must build and develop apartments on these sites.

The listing of present and processed units of low and moderate income housing is totally irrelevant to the issue. Whatever housing exists or is projected bears little relation to the question of additional development, since the present crisis cannot be solved -- or even significantly affected -- by the 840 units in various stages of planning. The Metropolitan Housing Committee indicates in its brochure released in July that

1,000 additional units each year enter the sub-standard category. Obviously, unless more than 1,000 units are constructed in the same time period, we fall further and further behind. To point out that more is being done than during previous years is futile, unless that "more" is enough. Since it is not, the "record" only serves to strengthen the Friends of FIGHT contention that vacant, city-owned land must be designated for housing.

The City Manager raises the question of the "effect" of proposed housing -- as it relates to the total development plan of the city, and with respect to "large concentrations of low-rent housing". At the same time, he acknowledges "the priority which low and moderate-rent housing has in our planning." Assuming that this priority is real, the implication that the Friends of FIGHT proposal threatens "balanced development" is difficult to understand. If the construction of less than 1,500 units on widely scattered sites will upset balanced development, how will the problem ever be solved? How, for that matter, will the new reservation of 2,000 units be used without also upsetting the balance? If the most suitable vacant land in the city cannot be used for housing because of the total development plan, the alternative must be to build new housing on land presently occupied either by housing or business. If it is occupied by housing, the inventory will not substantially

increase; if by business, the "balance" will again be upset. If multiple-unit construction is the only feasible way to provide significant numbers of units of low and moderate income housing for families, and if the "total development plan" does not provide for sufficient multiple-unit areas to make this possible, then the conclusion must be that the plan needs revision. A time of crisis requires reconsideration of plans drawn years ago when no crisis was recognized.

The question of "large concentrations" of low income housing is enigmatic. In the first place, the definition of "large" is obscure. "Clusters of up to 400 low-rent housing units in any location in the City have too many undesirable effects." If so, one must ask at what point the alleged undesirable effects diminish. In other words, what number of units is small enough -- without at the same time being so small as to have no effect on the problem. We have already noted the rapid decline in the inventory of standard housing. This affects low and moderate income families first, but it also affects the tax base, neighborhood businesses, the well-being of neighborhoods, and the city as a whole, as well as the "general objective of well-balanced development."

In addition, the objection to proposed "large concentrations" makes no acknowledgment of the effect of present large concentrations of low income families in sub-standard housing in present ghettos.

It is plain even to the casual observer -- and certainly to the serious investigator -- that the concentration of all of a city's low income families into a few neighborhoods with a high incidence of sub-standard housing, has undesirable effects. To transfer conclusions drawn from the present condition of thousands of families to proposals involving a few hundred families in well-planned, carefully designed, adequately maintained homes is hardly logical. The experience of numerous other cities indicates that with proper planning and good management practices the repetition of the Hanover mistake is not necessary or inevitable. The question is whether a policy based upon negative conjecture will continue to condemn families to sub-human living conditions.

The question of cost limitations is raised, but obviously does not bear significantly upon these sites because, if it did, further discussion would be precluded. Our technical consultants assure us that under either turnkey or leasing agreements, cost factors are not prohibitive. The one site about which cost reference is made is so large that the grade problems can be ignored. In short, while cost must always be considered, there is no reason to rule out any of these sites on that ground alone.

Since you have before you the original case presented for the four parcels of land in question, we will not belabor those points here. It should be noted that the

EXHIBIT C.

City Manager's cursory comments raise relatively minor objections. Regarding proposed recreational development, both at Cobbs Hill and Irondequoit Bay, priorities must be considered, and the less-than-maximum usage of present parks challenges the wisdom of a decision which places the future recreational development of vacant land above the immediate need for housing. Nevertheless, recognizing the need for both housing and recreational space, we submit that the two are not mutually exclusive, and that imaginative site development could combine housing and recreational facilities in a mutually beneficial way.

Another site is faulted for proposed rezoning of "scarce industrially-zoned land." Since 13 of the 20 zoning changes approved by the planning commission during the past year were from Residential to Business or Industrial zoning designations, it is apparent that "scarce" industrial land is created out of residential land with relative ease. The vacant land on LaGrange is, and has been, zoned Industrial, and yet there has been no proposal for its sale and development. It is, in addition, bordered on one side by recreational land, and on another by residential; thus arguing at least as reasonably for extension of the residential zone as for bringing industry closer to existing residential and recreational acreage. Since the City Manager does not mention the site bordering Charlotte High School at all, we assume he has no "preliminary" objection to raise.

EXHIBIT C

All four sites commend themselves for serious consideration, both on the basis of preliminary and more detailed investigation. They are vacant, they are owned by the city, they will not go away; neither will the housing crisis, nor the concerned citizens who want to see a change in the slow pace of progress. Much valuable time has been lost since our proposal was presented in early May. We urge prompt action on the sites, and welcome discussion with you or members of the city administration regarding details of the proposal.

Sincerely yours,

/s/ Laurence J.Kirwan

Laurence J.Kirwan, President
Friends of FIGHT, Inc.

LJK:klm

EXHIBIT D

DHC 5-9-68

City Land Urged for Housing

ATTACHMENT #2

Friends of FIGHT wants the city to use four parcels totaling 230 acres of city-owned vacant land for low-income housing.

Laurence J. Kirwin, Friends of FIGHT president, and Henry Botts, the organization's housing committee chairman, offered this proposal to Mayor Frank T. Lamb yesterday.

They hope an estimated 1,400 to 1,500 units could be built on the four parcels selected as the most feasible for housing of the many city-owned parcels studied in recent months by the group.

The sites proposed are:

—A 25-acre parcel near Charlotte High School playing fields, bordered on the north by Ontario State Parkway, the city line on the west, and a point north of Denise Road on the south.

—About 15 acres LaGrange Avenue and Mt. Read Boulevard near Aquinas Stadium.

—More than 50 acres between Sea Breeze Expressway and Irondequoit Bay in a finger of city land pointing northeast toward the bay.

—About 30 acres close to Cobbs Hill Park in a wooded section between the reservior and Cobbs Hill Drive.

Using the services of an architect and an engineer, the organization surveyed vacant city-owned land last fall.

The four selected sites, Botts said, are suitable for buildings.

They are vacant, he added. They are already owned by the city.

Botts said the sites, all in outer-city areas, are in line with the scattered-site concept of low-income housing.

The group asked the city to rezone the properties, designate them for low-income housing, and [illegible] red tape [illegible] approach development.

Friends of FIGHT [illegible] called on the city to make four parcels of city-owned land available for housing.

An estimated 1,400 housing units could be built on the land, which is vacant and suitable for housing development, according to Friends of FIGHT president Laurence J. Kirwin and housing committee chairman Henry Botts.

Kirwin, Botts and three Friends of FIGHT members who live in the city called on Mayor Frank T. Lamb today to present their proposal. The members are the Rev. Robert Booker, Robert Wolfe and Daniel Arensmeier. Friends of FIGHT did not propose today to build the housing.

Friends of FIGHT surveyed vacant city-ownad land last fall in response to arguments that there was little land available for low and middle-income housing in the city.

The four sites they recommend are the ones most feasible for the development of housing, Friends of FIGHT said.

The sites are these:

A 25-acre parcel close to Charlotte High School playing fields running from Ontario State Parkway on then north, along the city line on the west almost to Denise Road on the south, suitable for up to 400 housing units, Friends of FIGHT said.

About 15 acres between LaGrange Avenue and Mt. Read Boulevard near Aquinas stadium. Driving Park Avenue is to the south; suitable for 250 to 300 units.

Over 50 acres, much of it available for housing between Sea Breeze Expressway and a part of Irondequoit Bay in a finger of city-owned land pointing northeast toward the bay. Between 400 and 500 housing units could be built, Friends of FIGHT said.

About 30 acres close to Cobbs Hill Park in a wooded section between Cobs Hill Reservoir and Cobs Hill Drive, suitable for about 600 units.

The city was asked specifically to designate these sites for low-income family housing; enact the required zoning changes and give aggressive and creative leadership to help overcome the red tape that holds up housing development.

Friends of FIGHT is a white organization that seeks to mobilize support in the white community for the black organization FIGHT. Friends of FIGHT is now at work on its own agenda for [illegible] the white [illegible]

BEST COPY AVAILABLE

EXHIBIT E

METRO-ACT OF ROCHESTER, INC.

PROPOSAL REGARDING LOW-INCOME HOUSING

FEBRUARY 1969

EXHIBIT E

I. Introduction

II. Section 23

III. The Need

IV. Advantages

V. Steps Required by H.U.D.

VI. The Local Situation

ENCLOSURES

Circular about Section 23, H. U. D. IP-3, March 1967

Interest Subsidy per Tenant

Fact Sheet -- Available Housing in Key Towns

EXHIBIT E

I. INTRODUCTION

There is no magic solution to metropolitan Rochester's housing crisis. A change for the better will only come from diverse approaches to the problem.

In the suburbs we need single houses, multiple dwellings, homes to own, homes to rent, healthful living space for all ages, all incomes, all families; homes that make it possible for people to live where they work, homes that let low-income elderly people continue to stay where they have lived all their lives. We also need housing that permits low-income families to move from the city to the suburbs.

The following presentation describes briefly one step a qualified government unit can take to alleviate the suburban shortage of rental units for low-income persons and families.

Because the crisis in housing effects the whole Metropolitan area, Metro-Act of Rochester, Inc. joins with its affiliated groups in the towns in preparing and presenting this proposal in the hope that decisive action will result.

II. DO YOU KNOW...?

There exists a United States Housing Act of 1937, amended in 1965...?

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And under Section 23 of this Act, money is available for the housing of low-income families....?

And that this money is for use in a rent subsidy leasing program of low-income housing....?

And that no Housing Authority is required to implement the program....?

III. THE NEED

1. Low-income elderly people now often must move from areas where they have lived all their lives to find housing compatible with their income.

2. Low-income workers badly needed in the suburbs cannot afford to live where they work.

3. Almost all housing built today either for rental or sale is out of the range of low-income families.

4. Civic improvements in the city enjoyed by all residents of the county continue to eliminate low-income housing.

5. There is an immediate need for 15,000 to 30,000 housing units in the county.

6. In the last six years, an additional 2,000 jobs per year have been added to the employment rolls here, with many

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of these potential employees in the low or low-moderate income brackets. How can we expect to fill these positions, if no housing is available in this area for these people and their families?

IV. ADVANTAGES OF SECTION 23

1. No housing authority is required.

2. Any responsible governmental agency can act as administrator.

3. With open housing, we could have a town which is a better balanced community.

4. It gives the town home rule over the program.

5. The program is prohibited by law from causing inflationary effects on the private rental market.

6. There would be no reduction in property values.

7. No tax abatement or additional taxes would be necessary.

8. No zoning variances would be called for.

9. There are no enactment costs to the governmental agency.

10. Tenant selection is with the approval of the owner.

11. Agreement of the owner to participate is by his choice.

12. The governmental agency (alone) has the right to evict.

13. There would be, through guaranteed rent, incentive for the owner to upgrade property to qualify for the plan.

14. In any large structure the subsidized units can not exceed 10% of the total.

15. Only vacant units can be applied to the plan; no eviction procedure can be used.

16. Larger homes, which might have been sub-divided, would, as single units, have a much broader market for tenants.

17. The governmental agency can take credit for this plan, and reduce the chance of a higher authority taking over.

V. STEPS REQUIRED BY H.U.D.

1. A survey of the local rental market is taken to determine if local properties qualify.

2. The local governing body must approve the plan by resolution.

3. Application is made to H.U.D.

4. Landlords are approached and asked if they would enter into such an agreement.

5. Finding Tenants

   a. Eligibility is determined by governmental agency.

   b. Tenant can be chosen by owner with governmental agency approval.

   c. Tenant can be chosen by owner from a list supplied by the governmental agency.

   d. Selection may be by governmental agency if the owner prefers.

6. Administrative cost is borne by the government money available. (Approximately $10 per month per unit.)

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FACT SHEET

SUBSIDIZED RENTAL TO LOW-INCOME FAMILIES
under
Section 23, 1937 Housing Act

The cost of new construction is virtually prohibitive where low-income families are concerned.

For this reason, housing authorities (such as RHA) have come to rely heavily on leasing programs -- thus providing for low-income families a rent subsidy; the provision for such leasing is found in the 1937 Housing Act under Section 23.

Under the leasing arrangement, either non-profit or commercial properties may be leased.

Both the cost of construction and the absence of housing authorities have prevented any development of low income housing in suburban towns.

A Housing Authority for the county is being proposed, But: Even if all stages move smoothly it will take four years to establish that authority.

And, even if it is established, construction costs will prevent development of sizeable numbers of low-income units.

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However, it now appears that a housing authority is not necessary, because the Sec.23 leasing program can be administered by any governmental agency. (According to a recent legal opinion from the chief counsel of the Housing Assistance Administration.) The Town of Sodus has already embarked on such a program -- without establishing a housing authority.

This means that any or all of the suburban towns around Rochester, OR the County of Monroe, could apply for Federal Funds under Sec.23 and using those funds lease existing housing units for subsidized rental to low income families.

Under the leasing program, the owner receives his normal rent -- guaranteed for the duration of the lease -- with a portion (20% of monthly income) from the tenant, and the balance from the leasing agency. No owner can be "forced" to lease; any owner may.

Rent structures vary depending on family income and size, and there are ceilings on income which determine eligibility. Subsidy limits are set according to income level and family size.

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FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Population		Housing			
	Pop. 1960	Est. Pop. 1968,	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
BRIGHTON	27,849	33,550	8,474	831	10,913	3,111
CHILI	11,237	17,714	3,050	288	4,734	420
GATES	13,755	23,406	3,879	158	6,708	910
GREECE	48,670	72,976	13,840	976	21,719	3,942
HENRIETTA	11,598	26,956	3,116	313	7,137	1,787
IRONDEQUOIT	55,337	66,100	16,194	1,294	19,813	2,890
PENFIELD	12,601	22,430	3,732	690	6,375	1,430
PERINTON	16,314	27,771	5,[illegible]02	1,128	8,051	1,194

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FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Pop. 1960	Est. Pop. 1968	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
PITTSFORD	15,156	24,236	4,436	815	6,772	1,073
WEBSTER	16,434	23,263	4,743	571	6,642	1,080
VILLAGES						
E.ROCHESTER	8,152	8,576	2,495	752	2.668	826
FAIRPORT	5,507	6,092	1,747	547	2,031	557
PITTSFORD VILLAGE	1,749	1,823	621	NA	675	NA*
WEBSTER	3,060	4,411	941	NA	1,495	+509 from 1960

*No apt.constr. 1960-67

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FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Pop. 1960	est. Pop 1968	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
CITY	310,611	292,000	107,295	52,819	108,824	54,246**
BALANCE OF COUNTY ..	267,776	392,461	78,181	9,327	113,970	20,455
TOTAL COUNTY	586,387	684,461	185,476	62,146	222,794	74,701***

**Based on ratio mult.permits to toal constr.....unreliable est.
***Unreliable est. due to city data

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HOUSING

In Monroe County, N.Y.

SUMMARY REPORT

A Study for the

METROPOLITAN HOUSING COMMITTEE

Rochester Center for Governmental and Community Research

EXHIBIT F

METROPOLITAN HOUSING COMMITTEE MEMBERS

Mr. Joseph C. Wilson, Chairman

Mrs. DeLeslie L. Allen
Mr. Laplois Ashford
Bishop George W. Barrett
Mr. Harry D. Bray
Rabbi Herbert Bronstein
Mr. Abraham Chatman

Mr. Jorge Colon
Mr. John A. Dale
Dr. Louis K. Eilers
Mr. Maurice R. Forman
Mr. Thomas H. Hawks
Dr. William J. Knox
Mr. Philip M. Liebschutz

Mr. William D. Long
Mr. Joseph F. McCue
Mr. Paul Miller
Mr. John J. Petrossi
Bishop Fulton J. Sheen
Mr. James P. Wilmot

ABOUT THE COMMITTEE

The Metropolitan Housing Committee was jointly appointed by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The authorizing resolutions state the need for an effective metropolitan housing policy. "...if such policy is to be effective...," the resolutions continue, a citizens' housing committee is required in order to

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evaluate metropolitan housing needs and solutions and to make recommendations "for the formulation" of metropolitan housing policy.

The Committee was specifically charged with inquiry into the following:

(1) ". . . metropolitan Rochester's housing needs, 1967-1976;

(2) "the special housing problems of minority groups, the elderly and the handicapped;

(3) "proposed sites for new housing developments, 1967-1976;

(4) "the problems of financing, of taxation and of construction of required new housing particularly for those with low and moderate income."

Within this framework, the Committee initiated a comprehensive research program and a program of public education.

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HOUSING IN MONROE COUNTY, NEW YORK

Summary of Research Staff Findings and Recommendations

PREPARED FOR THE METROPOLITAN HOUSING COMMITTEE

Joseph C. Wilson, Chairman

By:

Alan J. Taddiken, Study Director
David J. Wirschem
Friedrich J. Grasberger
Craig M. Smith

Other Contributing Staff:

Marc D. Brodsky
Sandeep K. Dey
Nancy M. Garver
Alan Herman
Eleanor C. Parfitt
Marcia E. Sidmore

ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, INC.
(Formerly the Rochester Bureau of Municipal Research, Inc.)

Craig M. Smith, Director

April, 1970

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FOREWORD

The selected findings and recommendations summarized here are taken primarily from five housing study memoranda (together entitled Housing In Monroe County, New York) prepared for the Metropolitan Housing Committee by the staff of the Rochester Center for Governmental and Community Research, Inc. (formerly the Rochester Bureau of Municipal Research, Inc.). The Metropolitan Housing Committee was jointly appointed by the City and County Managers in 1967 for the purpose of exploring metropolitan Rochester's housing needs, 1967-1976. In particular, the Committee was charged to inquire "into the special housing problems of minority groups, the elderly and the handicapped; into pro-

posed sites for new housing developments ...; and into problems of financing, of taxation and of construction of required new housing particularly for those of low and moderate income."

In carrying out its charge, the Committee employed the Rochester Center for Governmental and Community Research as its research arm. During a period starting in early 1968 and extending through June, 1969, the Research Center staff prepared the following five reports for Committee study:

An Overview - Philosophy, Goals, Activities and Sources

Community Organization of the Housing Effort

Metropolitan Housing Review: Current Housing Market Structure

Patterns of Growth: Selected Aspects of Community Development in the Rochester Metropolitan Area

Summary of Proposed Recommendations for Metropolitan Housing Committee Support or Action

These reports are available at local public libraries and the Research Center.

These and other research efforts for the Commitee were financed jointly by the City of Rochester and Monroe County and through the generosity of Joseph C. Wilson (Metropolitan Housing Committee Chairman) and the Xerox Corporation.

Housing in Monroe County contains contributions from many parts of the Monroe County Community. The Research Center wishes to express its appreciation to the public agencies, civil servants, private corporations and individuals whose cooperation made this housing study possible.

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The contributions made by the staff of the Monroe County Planning Council to this study deserve special mention. Their counsel and efforts permitted the development of a working draft of a planned unit development article for town zoning ordinance and the development, with assistance of County Data Processing, of an analysis of vacant land for potential housing sites.

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SUMMARY OF RESEARCH STAFF FINDINGS

(Summary of selected findings primarily from Housing in Monroe County, New York a series of five study memoranda prepared for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research, Inc., January, 1968 - June 1969).

Housing Needs

(1) HOUSING NEEDS IN MONROE COUNTY, 1969-1975: The housing needs of Monroe County arise from several sources:

(a) housing units needed to accommodate a growing population;

(b) units needed to increase available vacant housing units--without which housing choice and market flexibility will remain diminished;

(c) units needed to relieve overcrowding in housing;

(d) units needed to replace sub-standard or inadequate housing--including replacement of accumulated substandard housing and continuing replacement of housing because of aging, demolition, fire, etc.

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The following table shows the additional housing units required in order to provide every individual and family in Monroe County with decent, standard housing by 1975. While it is not likely that this number of units will in fact be constructed by 1975, this table does reflect the vast magnitude of Monroe County's housing needs and possible housing goals for the community. The table does not reflect, however, the additional units which may generally be sound but which need substantial rehabilitation to make them conform to accepted standards. Approximately 12,000 such units exist besides those slated for replacement.

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Table A

ADDITIONAL HOUSING NEEDS, MONROE COUNTY
1969-1975

Current Needs	
Replacement of inadequate housing	9,700
Provision for adequate vacancies	2,700
Relief of overcrowding	1,000
Subtotal	13,400
Future Needs (1969-1975)	
Projected household growth	47,400
Provision for adequate vacancies	1,200
Accumulating replacement	7,600
Subtotal	56,200
Overall Total	69,600

(2) DEFINITION OF LOW AND MODERATE INCOME and LOW AND MODERATE INCOME HOUSING NEEDS IN MONROE COUNTY, 1969-1975:

Any designation of an income as low or moderate obviously depends on the specific demands placed on that income by an individual or family. However, while not always applicable to a specific

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situation, experience demonstrates that it is reasonable to define low and moderate household income ranges as in the following table which shows percentage distribution of Monroe County households by family size and income category.

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Table B

DISTRIBUTION OF HOUSEHOLDS BY FAMILY SIZE AND INCOME CATEGORY, MONROE COUNTY, 1968

	Households				
	1& 2 Person		3 or More Person		All
Low Income	Under $5,200	16.3%	Under $7,499	10.5%	26.8%
Moderate income	$5,200-7,499	6.6	$7,500-9,999	12.0	18.6
Middle Income	7,500-9,999	6.4	10,000-14,999	20.3	26.7
High Income	10,000 & over	13.0	15,000 & over	15.0	28.0
Totals		42.3%		57.8%	100.0%

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Low and moderate income families and individuals have, by far, the greatest problem in finding decent housing to meet their needs. Housing problems are particularly severe for the elderly and the young family. Within the county, the most serious (and numerous) instances of occupied substandard, unsafe housing and overcrowding of housing occur in the City of Rochester.

The table below shows the additional housing units required in order to provide decent housing for those now living in substandard or overcrowded units and for future low and moderate income households. As a comparison with the above Table A, Table C below reflects existing evidence that all CURRENT NEEDS are for low and moderate income housing. Of the FUTURE NEEDS, nearly 65 percent of the projected

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household growth and all vacancy and replacements will require low and moderate income housing.

Table C *

ADDITIONAL LOW AND MODERATE INCOME HOUSING NEEDS, MONROE COUNTY, 1969-1975

Current Needs	
Replacement of inadequate housing	9,700
Provision for adequate vacancies	2,700
Relief of overcrowding	1,000
Subtotal	13,400
Future Needs (1969-1975)	
Projected household growth	30,700
Provision for adequate vacancies	1,200
Accumulating replacement	7,600
Subtotal	38,500
Overall Total	51,900

*Table C differs from Table A in only one way: Table C excludes a projected 16,700 households needing middle and upper income housing during the 1969-1975 period.

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(3) AVERAGE ANNUAL PRODUCTION NEEDS FOR NEW LOW AND MODERATE INCOME HOUSING-- CITY AND TOWNS:

It is estimated that, in order to eliminate substandard housing by 1975 and to adequately house new low and moderate income households through 1975, the following average annual production schedule must be met:

	Low and Moderate Income Housing Units Average Annual Need, 1969-1975
City of Rochester	2,700 (new units)
Towns of Monroe County	4,700 (new units)
Total Monroe County	7,400 (new units)

The reader should keep in mind that these production figures represent only housing production goals. While production rates of these magnitudes must be achieved to provide all citizens with decent housing, the actual housing production rate for

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all (low, moderate, middle and upper income) housing has been running at only 5,400 units per year during the past decade. And, while peak years have run at nearly 7,000 units, this past year (1969) has actually run below the annual average for the 1960's decade.

(4) OVERCROWDING:

Housing inventory conditions seem to indicate the existence of at least as much overcrowding in 1968-69 as in 1960--even with more serious overcrowding for low income households in Rochester's central city. Approximately 10,000 housing units in Monroe County were overcrowded in 1960.

(5) HOUSING IN NEED OF REHABILITATION

Monroe County (including the City of Rochester) shows a need to rehabilitate

approximately 11,555 occupied housing units. At present, these units are either lacking facilities (such as hot water, flush toilet, bathtub or shower) or in a deteriorated condition (deteriorated units have defects that must be corrected if they are "to continue to provide safe and adequate shelter"). While in the City of Rochester some 3,200 buildings (most of which are residential units) are scheduled for rehabilitation, more than 5,500 occupied units are in need of varying degrees of rehabilitation and <u>are not</u> even being planned for at this time. If 1975 is considered as a target year for complete rehabilitation, there is an annual incremental need for the rehabilitation of 1,651 deficient units (including those already planned for rehabilitation). This figure <u>has not</u> been adjusted for

units which have fallen into this deficient category since 1960-- and thus it represents a conservative estimate.

(6) <u>WAITING LISTS:</u>

Housing applications and waiting lists for public and publicly assisted housing are a good indication of verified housing need. In early 1969, there were 4,379 applicants (both individuals and families) on the waiting lists of the Rochester Housing Authority (low income public housing) and Rochester Management (moderate income-publicly assisted housing). These applicants were applying for appxoximately 2,700-3,500 housing units. This range occurs because some units were (and are) still under construction. Nearly all completed units were fully occupied.

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Housing Inventory

(7) NEW HOUSING PRODUCTION:

From 1960 to 1968 the housing inventory of Monroe County increased by an estimated 48,241 housing units-- 36 percent of which were multiple dwelling units. The vast majority of these units were middle and high cost housing built largely in the first ring of towns surrounding Rochester. The county as a whole averaged approximately 5,376 housing units added each year over the last nine years. Of this number, the towns averaged 4,797 new units, while the city averaged only 579 new units. The units added to the towns were 30.5 percent multiple dwelling units and those added to the city were over 80 percent multiple dwellings. Almost five times as many multiple dwellings have been

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built in the towns since 1960 as were built there in all the years before 1960.

(8) PUBLIC AND PUBLICLY ASSISTED LOW AND MODERATE INCOME HOUSING IN MONROE COUNTY:

In the spring of 1969, there were approximately 2,815 publicly assisted moderate income housing units and 1,351 low income (public) housing units available or under construction -- a grand total of 4,166 units, all located in the City of Rochester. Of these, 1,255 units, or 30 per cent, were for elderly occupancy only.

Also in the spring of 1969, there were roughly 5,100 publicly assisted moderate income units and 2,200 public low income units in the pre-construction and planning stages. By late winter 1969, however, there were some 700 fewer units in the moderate income pre-construction and planning stage. Project proposals

have been falling through more quickly than new ones have developed.

(9) CONDITION OF HOUSING:

The Research Center defined deficient or substandard housing as: (1) physically sound but lacking some or all plumbing facilities; (2) physically deteriorating; (3) physically dilapidated. Given this definition, the deficient housing situation in 1960 can be summarized as follows:

DEFICIENT HOUSING UNITS IN MONROE COUNTY, 1960

	Total Deficient Units	Sound Lacking some or all Plumbing Facilities	Deteriorating	Dilapidated
County	27,036	6,046	17,157	3,833
City	20,540	4,755	13,104	2,681
Towns	6,496	1,291	4,053	1,152

Source: 1960 U.S.Census, PHC (1)-127

Approximately 23,000 of these deficient units were actually occupied. The City of Rochester is, by far, the houser of the majority of the ill-housed. Of the approximately 18,000 deficient occupied units in the city, nearly 4,000 were owner-occupied and over 14,000 were renter-occupied.

The Research Center estimated that the general condition of housing, especially in the city, has not improved significantly since 1960 -- and may have even declined. This estimate is conservative. A more realistic evaluation of condition of housing is the level of housing code violations. In the City of Rochester, housing code violations are believed to be at a level which indicates far more deficient, inadequate housing than is indicated by the Census data shown above. Unfortunately, good

statistical data on housing code violations is lacking.

Housing Costs

(10) GENERAL COMMENT ON HOUSING COSTS:

Less than one percent of all new single-family homes built in Monroe County since 1960 have been in the $15,000 or under category -- and over 70 percent have sold for more than $20,000. Significantly, in 1967 and 1968, the First Federal Annual Survey of New Construction showed no homes being built for under $15,000. Furthermore, in 1968, there was apparently a sharp decline in the number of housing units built in the $15,001-$20,000 category: 97 in 1968 versus 942 in 1967. Even in the "existing homes" market, there has been a decreasing number of units available for under $15,000 (758 in 1960 versus 407 in 1965). The average price of existing homes has increased from $15,763 in 1960 to more

than $21,000 in 1969. The cost to rent housing has shown similar increases.

(11) HOUSING PRODUCTION COSTS:

Housing production costs involve the following items: developed land, materials, on-site labor, overhead and profit, and other miscellaneous. Of these cost elements, many authorities agree that land has been the most rapidly rising over the past two decades. It is estimated that the average price per acre of raw land paid by builders rose from $1,222 in 1950 to $6,460 in 1970. FHA has reported that site value as a percent of total house value had increased from 12 per cent in 1950 to 20 percent in 1965.

The costs of both construction materials and on-site labor have been increasing - although not as rapidly as land. While labor costs are often blamed for the rapid rise in the cost of housing,

the facts seem to give far less significance to labor's part in forcing prices up. The President's Committee on Urban Housing has estimated that a 20 percent cut in building trade wages for on-site construction would secure only a 2 percent monthly savings in cost to the housing consumer.

(12) HOUSING OCCUPANCY COSTS:

Occupancy costs reflect production cost increases as well as debt retirement costs, site rent, taxes, utilities, maintenance and repair, administrative costs, vacancies, bad debts, and profit. (Site rent refers to mobile home cost element.) Debt retirement accounts for slightly more than 50 percent of total occupancy costs. Obviously, the terms of a loan are the most important factor in determining occupancy costs. The considerable increases in both interest

rates and taxes have had a great effect on the ability of households to afford a house. While the monthly income of a typical household has increased by about 41 percent, the monthly carrying costs (interest, principal and taxes only) for a home which cost $15,000 in 1960 had increased approximately 52 percent by 1968. The down payment had also increased $3,065 over the 1960 level. Combining only these factors, it becomes apparent that the moderate income household of 1968 was far less able to manage the purchase of a house in 1968 than a similar household in 1960.

(13) REDUCING HOUSING COSTS:

Housing costs should be seen as the results of a large variety of factors -- all of which require different approaches if spiralling dollar increases are to be curtailed. Increasing land costs must

be met with better designed land use control mechanisms and a more realistic taxing of land speculators. Labor costs must be brought down by increased efficiencies involving both new technology and reducing the seasonality of construction employment. The cost of mortgage money must be brought down through such practices as variable interest rates and increased availability (by requiring more money to be invested in local mortgage markets).

Housing of Minority Groups

(14) CONDITION OF MINORITY HOUSING:

More than 25 percent of all nonwhite households occupied overcrowded units in 1960. In comparison, the county as a whole had only 5.6 percent of its households living in overcrowded conditions. A disproportionate

number of nonwhites are also living in substandard units: more than 51.4 percent of all nonwhite households in Monroe County occupied substandard units in 1960 as compared to 15.2 percent of all households.

(15) RACIAL DISCRIMINATION:

A recent (January 1969) national study based on census data showed that residential segregation in Rochester is on the up-swing. Further, segregation within the city is clearly paralleled by segregation between city and suburbs: in 1964, 96.6 percent of all nonwhites lived in the city.

Thus, while there is a great need for low and moderate cost housing, merely providing a greater num r of such units will not necessarily eliminate all of the constraints operating in and distorting the housing market in Monroe County.

The community is left with a special category of housing demand: a demand for equal housing opportunities for non-whites. The complete rejection by suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies -- as well as individual citizens -- have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles blocking the construction of low/moderate income housing where it is needed.

Employment

(16) EMPLOYMENT AND THE HOUSING MARKET:

The relationship between employment and the housing market is fundamental. While the rapid growth of employment

opportunities in Monroe County during the last decade is a principal factor influencing our current housing shortage, the community's housing supply, in turn, directly affects labor market growth and the economic well-being of our community. Local industry cannot attract new employees if they cannot be adequately housed. In the absence of concerted remedial action to improve the community's housing, there can be expected a continued distortion of the labor market and a strangulation of the community's natural economic growth. (See also Section 31: Employment and the Location of Housing.)

Community Organization of the Housing Effort

(17) DECENT HOUSING - A COMMUNITY RESPONSIBILITY:

The concern for providing good basic housing is slowly being shifted from the individual to the community at large -- in

the same way that concern for basic educational needs and health needs have been assumed by the community. This is not to say that the provision of housing is fated to become a government function. Rather it is a growing recognition that a minimum level of standard housing is an individual right as opposed to a matter solely decided by economics and competition. It is to be hoped that, as the President's Committee on Urban Housing has said, decent housing will be provided by "existing subsidy programs and fuller private participation" making government only the "houser of last resort".

There is, however, a serious doubt as to whether our community is sufficiently organized and motivated to fully participate in the transition to decent housing for all. We may be forcing the Federal Government into the position of

"houser of the last resort" for our low and even our moderate income families.

(18) FRAGMENTATION IN THE COMMUNITY HOUSING EFFORT:

Organized efforts in the Rochester area to provide solutions to low and moderate income housing problems have typically been fragmented and uncoordinated. On both national and local levels no provision has been made to focus the responsibilities for designing and implementing solutions to low/moderate income housing problems in any single agency or jurisdiction.

In the Rochester area, the concern over low/moderate income housing problems has been manifested by the formation of many separate groups with their own purposes and organization. Some groups have developed into strongly independent and even competitive agents working toward highly specific objectives. The

tendency toward this type of independence and competition has proved counter-productive. Competition for dwelling units and land have increased rather than decreased costs. Further, while many groups need to perform similar specialized functions, the duplication of these functions has not only been inefficient, it has often been impossible. Thus one group may perform satisfactorily in one function and fail completely in another, and perhaps sacrifice an entire project as a result -- or delay its completion for long, unnecessary periods.

Inadequate organization has also led to a failure in forcefully representing low and moderate income housing interests both inside and outside the Rochester area.

The failure to assign specific responsibilities for increased low and

moderate income housing supply reflects both a reluctance to establish clear public priorities to solve housing shortages and a lack of conviction as to the most desirable approach.

Better leadership and more definite public commitment are needed if this community is to move toward providing decent housing for all its citizens.

(19) HOUSING PROGRAMS:

Federal and New York State programs have largely made Rochester's efforts in low and moderate income housing possible. At the same time, the use of these programs has been severely limited by insufficient Federal and State funds, bureaucratic red tape and, so far, the actual rejection of programs by all Monroe County jurisdictions outside the City of Rochester.

(20) LOW INCOME HOUSING PROGRAMS:

The Rochester Housing Authority is directly or indirectly responsible for all of the various low income housing programs in Rochester. It is a simple fact that low income housing requires substantial government subsidy -- and, in most cases, the Housing Authority is the only agency either able or willing to use the state and federal programs which allow sufficient subsidy. This is not to say that a housing authority is the only structure under which low cost housing can be provided. At least two federal programs -- Section 23 Leasing and Rent Supplement -- are technically available to various jurisdictions or private sponsors. But a number of factors -- including lack of local commitment and knowledge, inadequate federal funds, and suburban resistance to low income housing -- have

combined to make the Rochester Housing Authority the only supplier of (publicly assisted) low income housing. This, of course, has also meant the restriction of such housing to the Rochester city limits. Thus, the housing needs for many low income households -- especially the elderly -- continue to to unmet.

(21) MODERATE INCOME HOUSING PROGRAMS:

Moderate income housing has received considerably more attention in Rochester in the past than low income housing. Moderate income units have been built at over double the rate of low income units. Rochester Management, a non-profit housing management corporation organized in 1949, operates the largest number (over 1,600 units as of January, 1969) of subsidized moderate income rental housing units in the Rochester area. To this date, all publicly assisted moderate income

projects are located in the City of Rochester.

(22) URBAN RENEWAL:

Urban renewal does not add directly to the housing inventory -- and its initial stages obviously subtract substantially from the inventory. In very rough figures, the urban renewal process in Rochester (1968-1977) involves the displacement of approximately 5,300 families and the construction of an estimated 7,700 units. The renewal process does not ensure that the estimated 7,700 units will be built, but it does provide a favorable climate for new construction and rehabilitation. Of the several projects underway, residential redevelopment has occurred in only two -- the Third Ward and Baden-Ormond areas.

(23) NEW YORK STATE URBAN DEVELOPMENT CORPORATION (UDC):

The UDC is a public benefit

corporation having the powers to undertake residential, industrial, commercial and urban renewal projects. The Corporation's major purpose is to "facilitate private ownership of, and private investment in, such projects by offering for investment purposes fully financed, viable, approved and completed projects." The UDC has great potential for speeding the development of needed housing throughout Monroe County -- and especially in the town areas. Its powers permit it to execute the type of high quality planning long needed in this area.

The Corporation recently agreed to help a local nonprofit housing sponsor, Metropolitan Rochester Foundation, to build a moderate income housing project near East Rochester. The Corporation is also studying various other project

possibilities in Monroe County.

Comprehensive Planning

(24) COMPREHENSIVE PLANNING:

Comprehensive planning concerns the total planning of all aspects of community growth where such planning will help solve existing problems and avoid future ones. Until recently, however, such planning had almost exclusively emphasized physical aspects of community growth: utility systems, transportation and general land use. As a consequence, very little or no planning was done for housing or residential land use. (See also Section 28: Alternative Patterns of Development.)

(25) HOUSING IN THE COMPREHENSIVE PLAN:

The National Housing Act of 1968 requires that all future comprehensive plans assisted by federal funds include consideration of housing needs and land

use requirments for housing. Since most local jurisdictions preparing comprehensive plans use such federal aid, we can expect the comprehensive plan to become a useful tool in the provision of more and better housing in an improved residential environment. Local planning agencies -- the City Planning Bureau, the Monroe County Planning Council, and the Genesee/Finger Lakes Regional Planning Board -- are in various stages of developing detailed housing plans. It will probably be at least two or three years before any of these agencies release comprehensive recommendations and guidelines for residential development. The community can then expect an increase in the quality of on-going residential development. For example, even at this time, the Monroe County Planning Council is working with several towns in an

attempt to help them encourage better residential development through improved zoning and subdivision controls.

Land Use Problems and Controls

(26) LAND USE PROBLEMS IN MONROE COUNTY:

Monroe County is being plagued by many problems which are brought about by inadequate land development practices. These problems are often obvious: water pollution, drainage problems, destruction of conservation area and attractive land features, traffic friction, congestion and high accident rates, loss of recreational use, and unnecessarily costly municipal services. These problems combine to create obsolescence, deterioration, and the malfunctioning of neighborhood components.

Less obvious is the fact that these regrettable land development practices have directly contributed to increasing

the cost of housing. Further, environmental pollution, unattractiveness, uniformity and social stratification are far more common today in Monroe County than twenty years ago.

(27) MISDIRECTION OF LAND USE CONTROLS:

Land use problems can be attributed, at least in part, to the failure of local communities to give necessary priority to the basic problems of land use. For the most part, land use controls have been used to serve the purposes of other community needs: short term municipal and school revenue needs being the most obvious examples.

At present, the land use control mechanisms used by the towns encourage such poor land uses as strip residential and commercial development, uniformity of residential design, and inefficient service networks. Good design and

creative use of topographical features through cluster development and average density zoning are often thwarted by the existing zoning and sub-division regulations.

(28) ALTERNATIVE PATTERNS OF DEVELOPMENT:

Monroe County need not fall inevitably into the nightmare pattern of urban sprawl. The community has within its grasp the tools to reshape existing patterns and creatively channel future development decisions -- both public and private. A particularly important concept for redirecting present patterns is the so-called PLANNED UNIT DEVELOPMENT (PUD). In the PUD, an integrated community instead of an individual lot becomes the unit for planning. The PUD has the following basic objectives:

(a) Flexibility and efficiency in land use which aid in lowering development and maintenance costs;

(b) Integration of commercial, recreational, vocational and open land uses with residential uses;

(c) Preservation and development of conservation and recreation areas as an integral part of neighborhood design;

(d) Encouragement of the development of a variety of residential types suitable for all age groups and economic levels;

(e) Appropriate utilization of land which would normally not be developed because of topographical or economic factors.

Generally, PUDs exceed 100 acres in size -- and probably realize their greatest potential when they approach or exceed 1,000 acres.

(29) APPROVAL PROCEDURES FOR PLANNED UNIT DEVELOPMENTS:

To date, attempts in this area to execute larger planned unit developments have met with failure. Existing approval procedures for such developments, through uncertainty of legal position, time-consuming red tape and out-right rejection, play

a major part in bringing about such failures. Thus the adoption by towns of reasonable PLANNED UNIT DEVELOPMENT ORDINANCES is essential if our community is to substantially improve its process of land development. While many experts feel that existing state enabling legislation allows towns to adopt PUD ordinance, there can be no doubt that specific PUD ordinance enabling legislation would speed town adoption of such ordinance through clarification of legal standing.

Vacant Land in Monroe County

(30) VACANT LAND AND POTENTIAL HOUSING SITES:

There are approximately 403,000 acres of land within Monroe County excluding the City of Rochester. There is a total of approximately 276,000 acres of vacant or undeveloped land under private ownership in parcels five acres in size or larger. This land is owned by fewer than 5,700

individuals or entities. This considerable amount of vacant land is an indication that land for residential use in most towns is not - or need not be -- a permanently serious problem at this point in time. Usable land is still plentiful -- good land use planning and implementation along with revised vacant land taxing procedures can make it available for both general and low and moderate income residential use.

A general survey of vacant parcels in the ten towns surrounding Rochester revealed over 700 potential sites suitable for low and/or moderate income housing. While some of these sites are probably unavailable for one reason or another, there are undoubtedly a sufficient number of good sites for low/moderate income housing in the towns at this time.

Locating New Housing in Monroe County

(31) EMPLOYMENT AND THE LOCATION OF HOUSING:

In identifying the specific areas in which housing demand is most intense, the guiding principle is that any individual in the community should be able to find suitable housing in the proximity of his place of employment. The location of housing near one's place of work has important advantages for the individual worker and his family, the employer, and the community. The two most important of these advantages are the greater convenience and lower transportation costs to the individual employee. Limited housing opportunities in this area have prevented a great many Monroe County workers from receiving these advantages. The people who are most seriously affected by employment-residence dislocation are, of

course, the low and moderate income groups. People in these groups are the least able to pay high transportation costs and the most likely to be dislocated.

Some of the consequences of housing dislocation in Monroe County have been to burden moderate income workers with excessive transportation costs, to deprive low income workers of job improvement, and to leave employers with a shortage of modestly paid, but essential, blue-collar labor. The result for the community as a whole has been increasingly congested streets and thoroughfares and higher street maintenance and traffic control costs.

(32) LOCATING NEW HOUSING:

The largest accumulated shortage for replacement units exists in the City of Rochester, as opposed to the suburbs. But the city has been the victim of the

failure of the suburban market to keep abreast of its low and moderate income housing needs. In the future, to meet growth requirements, the towns must provide for at least two-thirds of the county's overall need for new units.

Property Taxation and Housing

(33) PROPERTY TAX AND LOW/MODERATE INCOME HOUSING:

The present dependence on property taxation for local services (especially schools) encourages low density, high value zoning. Fiscal pressures on local government have forced them "to permit only those types of land uses which add enough assessed valuation to the tax base to finance the municipal services required." Obviously, these fiscal practices have effectively blocked low and moderate income housing from being built in the towns.

(34) NEW DIRECTIONS IN FINANCING LOCAL GOVERNMENTAL SERVICES AND EDUCATION:

In order to remove the negative impact of property taxation on building needed housing in Monroe County, the following new directions in financing local services and education should be considered:

(a) Areawide local governmental services should be financed on an areawide basis;

(b) School tax burdens should be equalized by partial county-wide financing;

(c) An income tax should be used for educational purposes to restrict dependence of school financing on the property tax.

Need for Housing Data

(35) BASIC DATA NEEDED TO EVALUATE HOUSING QUALITY IN MONROE COUNTY:

Existing sources of information on housing are wholly inadequate for detailed planning and evaluation. It is necessary that certain data indicators be maintained to allow effective planning and evaluation

of community progress toward meeting specific housing objectives. For these purposes, the following standardized data should be maintained on a periodic basis for Monroe County (including the City of Rochester):

(a) Data on new residential building permits and certificates of occupancy;

(b) Data on residential demolitions, conversions and mergers;

(c) Data on waiting lists and number of applicants to low and moderate income publicly assisted housing projects;

(d) Data on the condition and overcrowding of housing;

(e) Data on owner-occupied and renter occupied housing vacancies.

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SUMMARY OF RESEARCH STAFF RECOMMENDATIONS

(Summary of selected recommendations primarily from Housing in Monroe County, New York -- a series of five study memoranda prepared for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research, Inc., January, 1968-June, 1969)

Housing Goals

It is appropriate that the decade of the 1970s be established as the time period during which substantial strides will be made toward providing decent housing in a suitable environment for every citizen in our community. Toward this ultimate goal, the research staff recommends the adoption of the community-wide housing goals presented herewith.

As part of its general housing philosophy the community should accept decent housing as the right of every citizen. Further, the attainment of this right should be accepted as a concern and responsibility of government aided and supported by the private

EXHIBIT F

sector of the community.

Flexibility of housing choice should be afforded all families and individuals within each income level. Such choice should be extended both to the type of housing and to its location. Further, it should be suited to the needs of the family or individual in relation to:

(1) Income capability;

(2) Place of employment;

(3) Requirements for transportation and community services;

(4) Desire to rent or purchase;

(5) Desire for open space, recreation, cultural pursuits and the like.

Research staff findings indicate that flexibility of choice is not available to the elderly couple and individual or to the young family and individual. Further, as a whole, minority groups are denied sufficient housing choice and suitable

housing. Most of these families and individuals have moderate or low incomes.

The solution for increasing the supply of moderate income housing can probably be achieved through a more varied and positive approach to private construction and financing of residential developments. On the other hand, in order to extend a sufficient supply of adequate housing to families and individuals with low incomes, it will be necessary to provide subsidies and incentives which may take a variety of forms such as: public housing, subsidized private housing, non-profit housing, company housing, mortgage incentives or guarantees, or income, mortgage, or rent supplements. The choice of such programs must be consistent with such planned social objectives as desegregation, reduction of undesirable population densities, provision

of freedom of choice and movement, and freedom from the institutionalization or social stigma associated with poorly designed public programs. Long term economic considerations should also be a determining factor in this choice.

It should be possible through proper attention to good planning principles -- with the help of flexible zoning standards and open space planning -- to design a housing program which will:

(1) Reduce excessive densities in existing urban neighborhoods;

(2) Maintain desirable density standards in new neighborhoods;

(3) Provide a desirable mix of residential facilities which will meet the needs of people by providing suitable housing near their place of work, near transportation services, and near needed community services and cultural and recreational facilities;

(4) Achieve proper separation between residential neighborhoods and other land uses;

(5) Provide for adequate traffic circulation.

Further, it should be possible to accomplish all of these housing program objectives with aesthetically attractive developments and within reasonable economic limitation.

It is apparent that to achieve these goals community approaches towards a housing solution must be varied and aimed at each level of need. As a matter of fact, assuming the natural moving up process to more suitable and desirable housing on the part of all income levels of our community, solutions aimed at one level will help solve other levels of housing needs by releasing vacated units for more suitable uses. This means, of course, that all efforts and solutions should not be aimed at the lowest level of housing. Encouraging the moving up (and relocation) process will tend to

eliminate the presently excessive pressures of demand for less desirable units and will create the opportunity either for renovation or removal of these units. Creating a more realistic balance between supply and demand will at the same time help reduce the unnaturally high rentals and income value of deteriorated central city housing.

These goals might appear overly optimistic, but they are definitely within the capabilities of this community if each possible course of corrective action is given proper communitywide attention and support.

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Implementing Housing Goals

The following implementing actions are recommended by the research staff as necessary in any realistic approach to achieving the broad community housing goals outlined above. Several basic steps must be taken to organize the community housing effort: (1) securing a communitywide commitment to broad housing goals; (2) providing an organizational framework for housing; and (3) developing a housing strategy of actions for implementation.

COMMUNITYWIDE COMMITMENT TO BETTER HOUSING

Without an unqualified public commitment to resolve our housing shortage and related urban problems, there can be little doubt as to the consequences: growing social injustice; community instability; environmental decay; and possible economic decline. Therefore, it is urged that the

EXHIBIT F

Metropolitan Housing Committee and all others concerned with the housing problem in this area petition the Rochester City Council, the Monroe County Legislature, and the town and village boards to formally express public support for the following commitments to housing:

(1) The adoption of a public policy establishing the 1970s as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area.

(2) The setting of priorities in the use of resources and leadership to improve existing housing and expand new housing opportunities for low and moderate cost housing.

(3) The setting of specific production goals in Monroe County for LOW AND MODERATE INCOME HOUSING which will reach an annual average for the next seven years of approximately:

---2,700 new housing units in the City of Rochester
---4,700 new housing units in the towns of Monroe County

Since almost 90 percent of the projected increase in total households are headed by the under 35 or over 55 age groups, particular emphasis should be placed on the housing needs of the young and the old.

(4) The adoption of the planned unit development and planned neighborhood concept as the preferred approach to land development. The intent of this concept is to build communities and neighborhoods which provide:

(a) a variety of housing types,

(b) a range of housing costs and tenure,

(c) open space,

(d) convenient shopping facilities,

(e) reduced friction with the automobile,

(f) increased opportunities for nearby employment, recreation and other qualities presently unavailable within the existing pattern of residential land development.

Included in this new comprehensive approach is the development of large planned communities where all residents including the young families and the

elderly can live in a high quality environment at a reasonable cost.

AN ORGANIZATIONAL FRAMEWORK FOR BETTER HOUSING

The presently fragmented and uncoordinated housing efforts of our community are not sufficient to solve our housing problems. Housing efforts should be channeled into a responsible and responsive Housing Council very similar in nature and structure to the Health Council.

The Housing Council would function as a deliberative body concerning major policy matters. It would be composed of representatives from relevant agencies, institutions, and groups (including, of course, non-profit housing corporations). The Housing Council would have an executive committee elected from its membership which would perform the more routine tasks of policy interpretation and

oversee the operations of its staff.

The Housing Council staff would operate from a Housing Development Center. This Center would actually represent a consolidation of the numerous functions now partially performed by individual groups. In fact, the staff would be largely drawn from existing groups and supplemented only where necessary (to fill gaps in technical services). Under the direction of a staff coordinator (or director), existing services and technical skills would be sought out and extended to Council members and other community agencies under contract or cooperative agreement. The Housing Development Center would be active in the following areas:

(1) Housing planning;

(2) Coordination of housing programs, projects and funds;

(3) Housing program evaluation and development;

(4) Technical services (e.g., legal services, property management, land acquisition, etc.);

(5) Housing statistics and research;

(6) Housing services (e.g., occupant selection, relocation, housing registry, housing counseling, etc.);

(7) Community relations.

The Housing Council through its Housing Development Center would be responsible to see that all of the functional areas outlined here are available to the community -- although the Center would not necessarily provide all the services directly.

The Housing Council, if adopted, offers the community the very real opportunity to concentrate its housing expertise: strengthening weak skills and perfecting others. The Council would help insure the community against missed

opportunities in low and moderate income housing -- and would provide the full-time dynamic leadership needed to realize Monroe County's housing aspirations.

Practically speaking, someone must assume the responsibility to create the Housing Council. It is recommended that the City Council and the County Legislature assume this responsibility and authorize the City and County Managers to take the steps necessary to establish the Council.

TOWARD BETTER HOUSING: SPECIFIC RECOMMENDED ACTIONS

The following list of recommended actions represents steps which are probably necessary to achieve the broad housing needs of our community. This list is not necessarily comprehensive nor does it establish a sequence of priorities. Research findings, however, do

indicate that these are basic steps which should be made part of the Housing Council's initial program or, lacking a Housing Council, should be assigned to appropriate, if diverse, agencies for accomplishment.

(1) Evaluation of all ongoing housing programs;

(2) Strong support for selected housing projects and programs presently underway or in the preconstruction or planning stage (the Housing Council staff could play the part of aggressive negotiator in pressing for the swift execution of projects now bogged down);

(3) Setting of specific objectives for housing including target dates, general locations and size of specific projects;

(4) Negotiations with the urbanizing municipalities of Monroe County to accept planned unit development ordinance and similar improved land use control mechanisms as recommended in Memorandum No. 4, and the encouragement of better designed and better balanced housing proposals by developers and builders;

(5) Invitation of the New York State Urban Development Corporation to operate (in a negotiated capacity) with the housing industry and others in Monroe County, in a series of (a) small (50 unit) scattered site moderate income projects in all urbanizing towns, and (b) one or more planned communities, satellite towns or new towns (Note: this could be done with the consent and cooperation of the respective jurisdictions including a "test use" of a PUD ordinance or, especially in the case of the small projects, without the cooperation of the jurisdiction by invoking UDC's extraordinary powers);

(6) Review and endorsement and (if desired) suggested revisions of the housing components of the comprehensive plans of area planning agencies;

(7) Wide community involvement in Housing Council activities and housing activities generally through effective use of area communications media;

(8) Development of an official county master land use plan for the towns of Monroe County; the plan should include suggested and negotiated residential density patterns (including various economic mixes of units) and appropriate areas for planned

unit developments; initial allocations could be based on a detailed Work/Residence Distribution Study -- such as the one carried out for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research;

(9) Negotiation with municipalities and the County Legislature for the acceptance of a County (master) land use plan;

(10) Where other efforts fail, the recommended use of "sanctions" (e.g., controlled access to federal and state funds for roads, sewers, schools, etc.) where reasonable residential land use and density patterns are not adopted (such sanctions could be initiated by the various planning agencies concerned);

(11) Encouragement of the use of the rent supplement program and Section 23 (public housing leaseback) in towns and villages (could be negotiated by Housing Council and arrangements made to manage units where necessary);

(12) Consolidation of housing services (e.g., tenant selection in subsidized projects; relocation; counseling; waiting lists, etc.);

(13) Restructuring and strengthening of the housing registry function

now performed by the Monroe County Human Relations Commission (See: Rochester Bureau of Municipal Research, Plan for a Housing Registry, January, 1966);

(14) Seeking amendment of the State Constitution to permit creation of a Monroe County Housing Authority;

(15) Reform of the real property tax according to recommendations set forth in the Rochester Bureau of Municipal Research's The Real Property Tax, May 1968, and similar studies, particularly to reduce the burden of public school financing on real property;

(16) Promoting the establishment of the right to "decent" housing as a statutory right with the obligation and responsibility to ensure this right for every citizen lodged in an appropriate state and/or county administrative mechanism;

(17) Probably through a non-profit corporation, the creation and execution of a demonstration project for the industrialized production of housing units for low and moderate income housing projects. (Needs exploration in depth by the community as an alternative method of bringing down housing costs.);

(18) Increasing the availability of technical planning services from the Monroe County Planning Council;

(19) Encouragement of the use of advance land acquisition by Monroe County in order to carry out land use plans;

(20) Strengthening of the authority of county, regional and state planning agencies to allow enforcement of approved land use plans and residential densities and "economic" mixes;

(21) Restructuring of the building and housing code enforcement functions of the city, towns and villages -- possibly merging the separate enforcement operations into a unified, countywide building and housing code administration. Such a merger would probably entail the adoption by all county jurisdictions of a single building and housing code.

These actions are without a doubt ambitious and controversial. If they seem too grand, it is only because the seriousness of the shortage of adequate low and moderate income housing and the quality of the entire residential development pattern

has not been properly faced or understood. The demonstrated mass and inertia of the problem are very great. Timidity is no response. The leadership of the metropolitan Rochester community must act boldly.

ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH.

The Rochester Center for Governmental and Community Research is part of the legacy of George Eastman. In 1915 the founder of Eastman Kodak Company gave personal and financial support to establishment of the Rochester Bureau of Municipal Research, an organization devoted to the principles of non-partisan evaluation and improvement of local government.

In the years since its founding the name of the organization has been changed and its scope has broadened, but the objectives set forth by Mr.Eastman have remained unchanged.

The Research Center is a private, non-profit, non-partisan agency. Its studies and research reports revolve around the issue of effective government in its broadest sense. The Center thus involves itself with urban and community concerns on a local and regional basis, and the examination of relevant public policy.

Its staff members represent a range of academic disciplines from statistics to economics, from sociology to political science and public administration. Their professional consultation services are available upon request from public officials and agencies, or appointed citizen committees.

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As a non-profit agency, the Research Center depends primarily upon voluntary contributions. Local governments often pay nothing for the Center's consulting or advisory services. In the case of major studies they usually pay a portion of the true cost. Studies for non-local jurisdictions are fully reimbursable.

The community is rewarded for its voluntary support of the Center by improved public services and more economic and efficient governmental operation. Adoption of various research study recommendations has often led to major tax savings.

The Research Center has been careful to preserve its non-partisan status in the community, working closely with all administrations on the public's behalf.

The home of the Research Center is the historic Jonathan Child House, built in 1838 by the first mayor of Rochester and pictured on the Center's seal. It was recently purchased by the Center from the Landmark Society of Western New York, Inc. The Research Center has restored the house and adapted it successfully for its use.

EXHIBIT G

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HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC.

CHARTER MEMBER LIST

1. Action for a Better Community, Inc. (ABC)
2. American Association of University Women, Rochester, New York Branch
3. Asbury First United Methodist Church Housing Committee
4. Association for the Blind of Rochester and Monroe County, Inc.
5. Better Rochester Living, Inc.
6. Bishop Sheen Housing Foundation
7. Brockport Action Task Force on Housing (BATH)
8. The Build Your Own House Club
9. Center for Community Issues Research
10. The Church of the Incarnation Episcopal, Vestry
11. Church Women United in Rochester and Vicinity, Inc.
12. Citizens Planning Council of Rochester & Monroe County, Inc. (CPC)
13. Community Interests Inc.
14. Community Volunteers of Rochester, Incorporated
15. Cooperative Extension Association of Monroe County
16. FIGHT
17. Four Downtown Churches of Rochester, New York, Housing Department of ACCT
18. Frederick Douglass League
19. Genesee Rapids Neighborhood Association
20. Genesee Settlement House
21. Greece Residents Organized to Act (GRO-Act)

22. Holy Name of Jesus Parish, Human Development Task Force
23. Housing Opportunity Program Enlistment Incorporated (H.O.P.E.)
24. I.C. Housing Development Fund Company, Inc.
25. The Junior League of Rochester, Inc.
26. Ladies Association for Community Enrichment (L.A.C.E.)
27. Lake Avenue Friendship Corporation
28. League of Women Voters of the Rochester Metropolitan Area
29. Metro-Act of Rochester, Inc.
30. Model Neighborhood Council
31. Monroe County Bar Legal Assistance Corp.
32. Monroe County Department of Social Services
33. Monroe County Planning Council
34. Montgomery Neighborhood Center, Inc.
35. 19th Ward Community Association, Inc.
36. National Council of Jewish Women, Rochester Section
37. New Rochester
38. North East Area Development, Inc. (NEAD)
39. Northeast Property Upgrading Association (NEPUA)
40. Northeast District Council, Inc. (N.E.D.C.)
41. Northwest Housing Task Force
42. Office of Human Development
43. Olean Townhouses
44. Penfield Action for a Creative Tomorrow (PACT)
45. Penfield Better Homes Corporation
46. Penfield Christian Landlords, Inc.
47. Priests Association of Rochester, Social Action Committee

48. Rochester Area Committee for Open Housing (RACOH)
49. Rochester Area Council of Churches Development, Inc. and Rochester Area Council of Churches Housing Development Fund Co. Inc.
50. Rochester Jaycees
51. Rochester Housing Authority (RHA)
52. Rochester Management, Inc.
53. Rochester Neighbors, Inc.
54. Rochester Soul Christian Leadership, Inc.
55. Rochester Urban Renewal Agency and City of Rochester, Dept. Urban Renewal & Econ. Development
56. Rochester United Settlement Houses (RUSH), Housing Development Fund Company, Inc. (Harris Park Project)
57. Senior Citizens Action Council Inc. of Monroe County, State of New York (SCAC)
58. Sisters of St. Joseph, Social Concerns Committee
59. South East Area Coalition, Inc. (SEAC)
60. South Area Welfare Rights Group (SEWRG)
61. South Side Seniors (Citizens)
62. St. Thomas Episcopal Church, Christian Social Action (STECCSA)
63. Teen League of Rochester (TL)
64. Temple B'Rith Kodesh, Social Action Committee
65. Third Presbyterian Church, Session
66. Unitarian Housing Committee (First Unitarian Church)
67. WEDGE
68. Webster Council of Churches Housing Committee
69. Webster Human Relations Council
70. Western Monroe Community Project, Inc.
71. Young Womens' Christian Association of Rochester and Monroe County (YWCA)

EXHIBIT H

Attachment #7

Dec. 30

Hon. Joseph Ferrari
President, Monroe County Legislature
County Office Building
50 Main Street West
Rochester, New York 14614

Re: Housing in Monroe County

Dear Mr. Ferrari:

Early in 1967 the City and County, under authorization of the Rochester City Council and the Monroe County Board of Supervisors, jointly appointed a Metropolitan Housing Committee. The authorization stated the need for an effective metropolitan housing policy, further stating that "if such policy is to be effective..." a citizens housing committee is required in order to evaluate metropolitan housing needs and make recommendations "for the formulation" of a metropolitan housing policy. The Committee was specifically charged with inquiring into "Metropolitan Rochester housing needs, 1967-1976."

About a year later that Committee commissioned the Rochester Bureau of Municipal Research (now the Rochester Center for Governmental and Community Research Inc.) to perform the required research and report to the Committee. A series of reports was completed in 1969.

EXHIBIT H

These reports, under the title "Housing in Monroe County, N.Y." contained a complete analysis of the housing problem in Monroe County, together with suggested goals for reducing the crisis. It also included a list of 21 "specific recommended actions." The report was neither recognized nor acted upon by the Committee, the County Legislature, or City Council.

Concerned with this seemingly deliberate inaction in the face of obvious need, an Ad Hoc Housing Committee was formed in June of 1970. It brought together representatives from a broad range of neighborhood associations, community interest groups, non-profit housing groups, and social service organizations. Its purpose was to create a "Housing Council", the organizational framework for housing in Monroe County recommended by the Bureau's study. Efforts to accomplish this purpose have progressed, and at the last meeting of the Ad Hoc Housing Committee it was unanimously agreed that the Committee would henceforth constitute the Housing Council of Monroe County and would serve the community in that capacity.

Since the problem must be approached on a county-wide basis, we believe that County Legislature must initiate the required action. Therefore, by copy of this letter, we petition the Legislature to take the following actions:

EXHIBIT H

1. Give official public recognition to the report "Housing in Monroe County, N Y" prepared for the Metropolitan Housing Committee.

2. Demonstrate that official recognition by creating a standing legislative committee concerned solely with action to resolve the housing crisis in Monroe County and instructing it to make specific immediate recommendations to the Legislature.

3. Commit themselves to implement the goals stated on pp 26 and 27 of the "Summary Report, Housing in Monroe County, N.Y." and take the actions stated on pp 29, 30 and 31 of that report

4. Create a Citizens Housing Advisory Committee to advise the County Legislature on housing matters. This advisory committee should consist of representatives from community interest and neighborhood groups in the Rochester-Monroe County area. The groups to be represented shall be chosen by the Housing Council of Monroe County

EXHIBIT H

Due to the deepening crisis and long history of inaction, the following dates, by which constructive action should be taken, are suggested for the like numbered previously listed items:

1. Two weeks after receipt of this letter.

2. Three weeks after receipt of this letter.

3. Five weeks after receipt of this letter (significant action).

4. Four weeks after receipt of this letter.

The idea that government should act to assure adequate housing for all is not new. A national goal of "a decent home and a suitable living environment for every American family" was stated in Section 2 of the Housing Act of 1949. Yet, while the County spends millions of dollars and employs thousands of people in other areas of public benefit, including public health and public welfare, it has not had any significant impact on housing.

Sincerely,

V.F. Vinkey, Chairman
Political Action Committee
Housing Council of Monroe County

VFV:klm

FOR FURTHER INFORMATION, CALL VIC VINKEY:
325-2000, x13982(daytime) 244-3761(evening)

EXHIBIT I

Statement to the Ways and Means Committee and the Intergovernmental Committee of the County Legislature. Tuesday, January 26, 1971.

HOUSING CRISIS IN MONROE COUNTY

GENTLEMEN: This statement is intended as a brief review of the housing crisis in Monroe County. There are at least three severe housing problems facing Monroe County: First, a housing shortage for low and moderate income families and individuals; Second, a lack of adequate housing-related services including a lack of family budget counseling, housing care training, and housing referral services; Third, a deterioration of residential environments because of inadequate public and private planning and development practices. I will briefly sketch the dimensions and nature of each of these problems - with special emphasis on the first: the desperate housing plight of our fellow citizens with low and moderate incomes - the elderly, young families, the handicapped.

First, the low and moderate income housing shortage. By low income I mean those families with annual incomes of less than $7,500. - and individuals or couples with annual incomes of less than $5,000. By moderate income I mean those families earning annual incomes of $7,500. to $10,000. - and those

EXHIBIT I

individuals or couples earning $5,000. to $7,5000. Obviously, these ranges are only approximate and may vary considerably depending on individual circumstances. To provide decent housing for these low and moderate income households, the Rochester Center for Governmental and Community Research has, as you probably know, estimated the need to build 7,400 new units each year over the seven year period 1969-75. This amounts to a total of approximately 52,000 units. Of these, 13,400 units are needed immediately to replace substandard housing, to provide market flexibility, and to relieve overcrowding and 38,500 are needed to accommodate newly formed households and other future needs. In addition, approximately 11,500 occupied homes and apartments are in need of major rehabilitation. The Research Center's report, cited here, is only one of many reports - local, state and federal - which have documented and reaffirmed Rochester-Monroe County's serious housing problems.

Is our community moving toward an adequate solution to the low and moderate income housing shortage? While the need for low and moderate income housing units has been estimated at 7,400 a year, we actually have averaged only 5,400 housing units per year for all income levels during the past decade! Furthermore, 1969 was one of the worst years in the 1960's for producing housing - and 1970 was by far the worst year for housing production in over 10 years. Throughout the 1960's the production and the availability of housing for low and

moderate income families and individuals has decreased. The private sector has produced virtually no housing for even moderate (no less low) income households since the mid-1960's .

It is true that some low and moderate housing has been produced through various state and federal programs. So far, however, all of this housing has been concentrated in the City of Rochester - and production has been very limited - an annual average of fewer than 400 units in the 1960's. It is also true that several public and private agencies - the Metropolitan Housing Foundation, the Rochester Housing Authority, the New York State Urban Development Corporation, etc. - are planning substantial low and moderate income housing construction programs throughout the county over the next five years. However, even if all the now planned housing were actually constructed, we would be left with a substantial deficit of unmet housing needs. And, needles to say, planned housing - especially for low and moderate income families - has a notorious reputation of never being realized. The obstacles to building decent housing in the quantity needed are many.

So, to return to the question - Is our community moving toward an adequate solution to the low and moderate income housing shortage? I must answer: NO! We are not ! Although laudable and

substantial, present plans, even if realized, would amount to probably less than 50 percent of our housing needs as presently recognized. Greater, more organized and far more determined leadership is needed.

A second major housing problem is the lack of coordinated, adequate housing-related services. While services for relocating families displaced by certain public actions, services for training in proper housing care, and services for budget counseling, housing placement referrals and the like to exist in our community, such services are very limited and almost entirely uncoordinated. Thus, many, if not most, citizens seeking housing are denied the assistance they need, many are pushed from one office to another in a never ending circle of red tape and frustration. Besides this shockingly unfair treatment of our fellow citizens, the community also denies itself its fair share of the benefits of federal and state housing-related programs - as well as denying itself a more complete and reasonable use of its existing housing stock.

Let me elaborate. By failing to be sufficiently aware of our citizens' housing needs on day-to-day basis, we fail to know our eligibility for state and federal housing programs -programs for which we are paying but receiving less than our fair return. Under-utilization of such programs is particularly obvious in all our county's municipalities outside the City of

EXHIBIT I

Rochester. Our failure to establish a working registry of housing units with a good placement referral service has meant both inadequate and inappropriate utilization of the existing housing stock. We fail to rehabilitate units which should be rehabilitated; we fail to quickly reoccupy certain types of units as they become vacant; we under-utilize many housihg units whose use could be maximized. It is impossible to do justice to this complex subject of housing-related services here - but I call your attention to our acute need for greatly improved services and service coordination.

A third major housing problem is one with which we all have either direct or indirect experience: the deterioration of residential environments because of inadequate public and private planning and development practices. What do I mean by"deterioration"? I mean the excessive separation of place of residence from place of work (as well as from schools, recreational facilities, open space, shopping and the like). I mean excessive traffic congestion and high accident rates caused by virtually unlimited access of driveways (residential and commercial) to our major county thoroughfares (Ridge Rd.; Route 31; West Henrietta Road - to name a few). In short, I mean the entire series of unnecessary but acute problems - from water pollution to unnecessarily high municipal service costs - brought about

EXHIBIT I

by insufficient attention to urban planning and design. Among other things, the absence of an official Monroe County comprehensive land use and development plan has contributed to this present regrettable state of affairs. Guidelines,which could help greatly to develop **inter-municipal** solutions to growth problems and, indeed,to prevent such problems in the first place - do not yet exist.

All three of these problems - the low and moderate income housing shortage, inadequate housing services, and deteriorating residential envirnments - combine into one large problem which can truly be called - and must be recognized as - a serious housing crisis in Monroe County.

Lawrence Witmer, Housing Council of Monroe County.

BEST COPY AVAILABLE

EXHIBIT J

By Messrs. Williams and Santoro

Intro. No._____

RESOLUTION NO._____of 1971

CREATING A SPECIAL COMMITTEE ON HOUSING.

WHEREAS, the Metropolitan Housing Committee, charged with inquiry into metropolitan Rochester's housing needs for the period 1967-1976, employed the Rochester Center For Governmental and Community Research which in a report made public in April, 1970 analyzed various components of the housing problem and recommended certain actions be taken,

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE COUNTY OF MONROE as follows:

Section 1. A special committee to consist of five (5) Legislators to be appointed by the President is hereby

EXHIBIT J

created to analyze the actions recommended in the report entitled "Housing in Monroe County, N.Y." and to submit such resolutions to the County Legislature in relation to the implementation of the report as the Committee deems advisable.

Sec. 2. This resolution shall take effect immediately.

Ways and Means Committee
Intergovernmental Relations Committee

February 25, 1971

File No. 71-18

EXHIBIT K

70 North Water Street
Rochester, New York 14604
(454-2770)

May 5, 1971

Mr. Gordon B. Anderson
County Legislator
110 Newcastle Road
Rochester, New York 14610

Dear Gordon:

It has now been more than a month since our first meeting with the Special Legislative Committee on Housing which you chair. We are encouraged by your obvious interest and concern about the housing crisis and hope to continue working with you and other members of the Housing Committee. However, we are greatly distressed by the Committee's failure to take more immediate and positive action on the eight items which we proposed at our initial meeting. We proposed these items because they were all amenable to immediate action. Yet, you have completed action on only two. Some interpret this as a direct and negative indication of the results which the committee can be expected to produce.

In particular, we believe that the Committee presently has sufficient information to indicate the desirability of recommending that the County Legis-

EXHIBIT K

lature recognize and endorse the Housing Council of Monroe County. As you know, the city passed a resolution of endorsement several months ago. We do not know of any questions of legality or procedure which prevent the legislature from taking this action. Current plans are to "officially launch" the Council during "Housing Week" (June 20-26). It would be most appropriate for an official endorsement to be approved by the full legislature well in advance of those dates. Incidentally, we hope to have Mr. George Romney, the Secretary of Housing and Urban Development, as a speaker for the occasion.

The remaining items are equally important. We recommend that the committee, as a matter of good business practice and a demonstration of concern, attempt to make recommendations on all of the eight points by mid May (May 18, 1971). If, for some reason, recommendations cannot be made by then, we would appreciate very much hearing from you in that regard by the aforementioned date. This would enable us to achieve a better understanding, of any problems you envision and a chance to provide whatever assistance we can.

Thank you.

Sincerely,
/s/ Vic
Victor F. Vinkey
Chairman, Political
Action Committee
Housing Council of
Monroe County

EXHIBIT L

SUGGESTIONS FOR IMMEDIATE ACTION BY THE SPECIAL COMMITTEE ON HOUSING OF THE MONROE COUNTY LEGISLATURE

1. Recognize the Housing Council of Monroe County

2. Recommend endorsement of specific housing goals by the full legislature (Number of units to be constructed in a specific time span)

3. Accelerate, to the maximum extent possible, completion of the County Master Plan, by additional funding or reording of priorities within the planning council. First priority to be given to the housing component of that plan.

4. Recommend implementation (by passage of appropriate legislation) of Section 239 n of the General Municipal Law (Subdivision Review).

5. Endorse the state "Community Development" bill and associated bond issue by sending an appropriate message from the county legislature to the state legislature.

6. Recommend appointment of a special Monroe County Tax Study Committee to investigate reform of the real property tax.

EXHIBIT L

7. Take a tour of housing conditions in Monroe County

8. Recommend a county legislative resolution authorizing and suggesting close working relationships between the Monroe County Planning Council and UDC -Greater Rochester, Inc.

Political Action
Committee
Housing Council of
Monroe County
March 24, 1971

EXHIBIT M

MONROE COUNTY LEGISLATURE

GORDON B. ANDERSON
Assistant Majority Leader
Legislator -- 21st District
110 Newcastle Road
Rochester, New York 14610
Tel. 482-8580

COUNTY
OF
MONROE
STATE OF
NEW YORK

June 9, 1971

Mr. Victor Vinkey, Chairman
Political Action Committee
Housing Council of Monroe County
134 Nunda Blvd.
Rochester, New York 14610

Dear Vic,

I regret the delay in answering your letter of May 5th to me. In your letter you requested a review of the eight suggestions presented to the County Special Housing Committee. If I recall correctly, one of the first requests made by the Housing Council of Monroe County was that a Special Housing Committee of the Monroe County Legislature be appointed. We now have such a committee. That is one request fulfilled.

Now let's consider the eight specific requests made to the Special Housing Committee.

1. Recognition of the Housing Council has not been formalized, but tacit approval has been given. The Special Housing Committee meets

EXHIBIT M

with representatives of the Housing Council and obtains valuable information and direction from the Council.

2. Recommendations of housing goals as presented in the Housing in Monroe County publication have not been accepted to date.

3. Acceleration of the County Master Plan with priority to be given to the housing component of the plan is not feasible. The various components are inter-dependent and the master plan must be presented as a whole

4. It does not seem advisable for the County Housing Committee to recommend implementation of the 239N General Municipal Law. The Monroe County Planning Council has not recommended the implementation of this law. In fact, they are on record of not favoring implementation.

5. Endorsement of the state "Community Development Bill" by the County and City has been indicated by a letter signed by President Ferrari and Mayor May urging the local state legislators to support the passage of necessary legislation.

6. A letter from the Special Housing Committee requesting the appoint-

EXHIBIT M

ment of a 5-7 member County Study Committee will be submitted to the Monroe County Legislature on June 15th.

7. The Housing Committee has observed housing conditions in Monroe County through the courtesy of the Housing Council of Monroe County who provided routes and transportation for the tours.

8. Close working relationships between U.D.C. Greater Rochester and Monroe County Planning Council has been in effect and will continue. The accompanying letters confirm this fact.

In my opinion the counsel from your group has been helpful and you are to be congratulated on your achievements thus far.

Yours truly,
/s/ Gordon
Gordon B. Anderson,
Chairman
Special Housing Committee
of Monroe County

/ch

EXHIBIT N

Monroe County Legislature
County of Monroe, State of New York
Joseph N. Ferrari, President

Michael D. Pastorelle
Clerk

Joseph C. Peiffer
Deputy Clerk

407 County Office Building
Rochester, New York 14614
Telephone 454-7200 extension 545
Area Code 716

September 2, 1971

To The Honorable
The County Legislature
County of Monroe
Rochester, New York

Ladies and Gentlemen:

The Special Housing committee pursuant to the charge contained in Resolution No. 86 of 1971 has analyzed the report entitled "Housing in Monroe County, N.Y." In addition, counseling has been asked for and received from the various agencies involved in housing in Monroe County.

After extensive deliberation over information obtained through these sources, the Special Housing committee recognizes that the problem of housing cannot be solved within the boundries of the city of Rochester alone, and encourages all the people of our community, as well as

those in commerce and government, to review the need for housing as community-wide responsibility, and to seek solutions together.

The Special Housing committee respectfully submits the following recommendations to the Monroe County Legislature:

I. The formation of the Housing Development committee to be jointly created by the County Legislature and the City Council. Members of this committee would consist of the executive directors representing the following organizations.

1. Association of Town Supervisors
2. Chamber of Commerce
3. Citizen's Planning Council
4. City of Rochester Planning Commission
5. Council of the City of Rochester
6. FIGHT
7. Genesee-Finger Lakes Regional Planning Board
8. Housing Council of Monroe County
9. Metropolitan Rochester Foundation
10. Monroe County Legislature
11. Monroe County Planning Council
12. Rochester Home Builders Association
13. Rochester Housing Authority
14. Urban Development Corporation
15. Urban Renewal

The purpose of this committee is to bring together various elements of our community with the ability to make things happen in the field of housing. They would

represent planners, builders, government and private enterprises from the community.

II. Recognize the Housing Council of Monroe County (representing many community groups interested in housing problems) as one of several agencies concerned with solving the housing problems which exist in this County, and that the Legislature encourages the Council in its efforts to stimulate the community to find ways to provide decent housing for all that live in this County.

III. Endorse the revised housing goals of 79,000 units to be constructed in Monroe County during the period from now through 1980. Of this amount 54,500 is recognized as growth through 1980 and 24,500 are needed to replace sub-standard housing. Of the 70,000 units 60% or 47,500 units are designated for moderate and low income families.

IV. Encourage the Monroe County Planning Council to complete the County Master Plan as quickly as is feasible. The Housing Committee recognizes the need and importance of this plan as a tool to solving the many problems of our community of which housing is one of the most important.

V. Enact as a Local Law 239N of the General Municipal Law (Sub-Division Review). This law provides for a review of certain proposed sub-division plots

EXHIBIT N.

by the Monroe County Planning Council. Enactment of this law will help assure better land use throughout the County.

VI. Endorse the State Community Development Bill and associated bond issue by sending an appropriate message from the Monroe County Legislature to the State Legislature.

This bill is in the form of an amendment to the New York State Constitution. It has been passed by 1971 State Legislature. Must be passed by 1972 Legislature and submitted to State electorate in election of 1972 before it can be enacted.

VII. The Monroe County Legislature call upon the State of New York to enact a law providing for capital grants to assist local Housing Authorities in maintaining adequate operating, maintenance and tenant services at State-aided public housing developments.

VIII. The creation of a standing Legislature Committee entitled Community Development Committee. The committee would, among other things, deal with housing needs of the community; cultural aspects and work as liaison between the County Legislature and various planning groups with respect to land use and development.

The Special Housing committee requests that these recommendations be referred to

EXHIBIT N

the appropriate committees. We strongly recommend affirmative action by the County Legislature.

Respectfully submitted
Special Housing Committee
Gordon B. Anderson,
Chairman
R. Graham Annett
Jeremiah F. Clifford
Ronald J. Good
Dorothy M. Riley

EXHIBIT O

FOR RELEASE: 6 P.M., SUNDAY, JANUARY 24, 1971

MAY ASKS COUNCIL APPROVAL OF HOUSING GOALS

Mayor Stephen May will introduce a resolution at Tuesday's City Council meeting strongly endorsing recommendations of the housing report prepared for the Metropolitan Housing Committee by the Center for Governmental and Community Research and urging all levels of local government in Monroe County to participate in solving the current housing crisis.

The Mayor noted that City Council approval of his resolution will help carry out the report's recommendation that the "Rochester City Council and the Monroe County Legislature and town and village boards formally express public support for adoption of the 1970's

EXHIBIT O

as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area." May's resolution also notes that the report further recommends that "specific production goals be set in Monroe County for low and moderate income housing which will reach an annual average for the next seven years of approximately 2700 new housing units in the City of Rochester and 4700 new housing units in the town of Monroe County."

The Mayor emphasized that the city administration is more than meeting the recommended city goal through a greatly accelerated housing program which will result in 4,000 housing starts in the City in 1971. This is more than the total

for any year in the city's history and close to the combined total for the decade of the 1960's, May said.

"Although the city is making an expensive and massive effort to deal with the pressing housing needs of low and middle-income families, senior citizens and the handicapped through subsidized units, there has never been a unit of subsidized housing built in the suburbs of Monroe County," he emphasized. May strongly urged that the leadership exhibited by the City of Rochester, in meeting human needs of such a vast magnitude, be followed immediately by a comparable exercise of responsibility by the Monroe County Legislature and the towns and villages of Monroe County.

The report, entitled "Housing in Monroe County," stems from actions of the

City Council and the former Monroe County Board of Supervisors which authorized the City and County Managers to appoint a Metropolitan Housing Committee. The Committee, appointed in 1967 and chaired by Joseph C. Wilson, conducted a comprehensive research program, employing the Center for Governmental and Community Research, which, in its report analyzed various components of the housing crisis in the Rochester Metropolitan area and emphasized that there must be a choice of suitable living quarters for persons of all income levels throughout Monroe County.

EXHIBIT P

Councilman May

By Council May-----RESOLUTION ENDORSING REPORT OF ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, ENTITLED"HOUSING IN MONROE COUNTY, N.Y.,"

WHEREAS, the Rochester City Council and the former Monroe County Board of Supervisors recognized the need for an effective metropolitan housing policy and, pursuant to such recognition, authorized the appointment of the Metropolitan Housing Committee by the City and County Managers in 1967, and

WHEREAS, this committee was charged with inquiring into metropolitan Rochester's housing needs for the period 1967-76; special housing problems of minority groups, the elderly and the handicapped; proposed sites for new housing developments for the period 1967-76;

EXHIBIT P

and problems of financing, taxation and construction of required new housing, particularly for those with low and moderate incomes, and

WHEREAS, the Metropolitan Housing Committee, chaired by Joseph C. Wilson, conducted a comprehensive research program, employing the Rochester Center for Governmental and Community Research which, in a report made public in April, 1970, analyzed various components of the housing problem in the Rochester metropolitan area, and

WHEREAS, this report recommends that "As a part of its housing philosophy the community should accept decent housing as the right of every citizen, and further the attainment of this right should be accepted as a concern and responsibility of government aided

and supported by the private sector,"
and

WHEREAS, this report recommends that the "Rochester City Council and the Monroe County Legislature and town and village boards formally express public support for adoption of the 1970's as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area,"
and

WHEREAS, this report recommends "specific production goals be set in Monroe County for low and moderate income housing which will reach an annual average for the next seven years of approximately 2700 new housing units in the City of Rochester and 4700

new housing units in the towns of Monroe County," and

WHEREAS, this report recommends the creation of a Metropolitan Housing Council to coordinate and expedite the work of non-profit housing groups in this area, and

WHEREAS, the City of Rochester is demonstrating its commitment to the goals cited in this report by a program of greatly increased housing starts in 1970 and thereafter, particularly for low and middle-income families, senior citizens and the handicapped,

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Rochester hereby commends those responsible for preparing "Housing in Monroe County, N.Y.", pledges its continuing efforts to meet the report's objectives, and urges other

EXHIBIT P

local government bodies, including the Monroe County Legislature, to endorse the report and participate in its implementation, and be it further

RESOLVED, that copies of this resolution be forwarded to the Monroe County Legislature and all town and village boards in Monroe County.

EXHIBIT Q

METRO-ACT PROPOSAL TO THE PENFIELD TOWN BOARD

Since the release of the Wilson Report on Housing (prepared by the Rochester Center for Governmental & Community Research in 1970) the need for and ability of the suburbs to assume its share of low and moderate income housing became more evident than ever.

However, the lack of response by the towns of Monroe County led the Metro-Act Housing Task Force to initiate an investigation into the zoning ordinances and practices of the towns. All of them are to a greater or lesser degree discriminatory and unduly restrictive and Penfield's ordinance and practices ranked among the most restrictive.

EXHIBIT Q

The apparent solution to the housing problem, a problem listed as having highest priority in the Community Chest Cresap study, lies in the willingness of the suburbs to change their zoning ordinances and assume their proportion of needed housing. Failing this, a challenge in the courts may be necessary to force the town leaders to do what they refuse to do voluntarily.

Our recommendations cover areas of density restrictions, lot size and floor space requirements.

More specifically we propose the following as necessary changes:

1) Zoning of 10% of the total land area of the town (approximately 2,500 acres) for housing below the $20,000 market value range.

EXHIBIT Q

A-- Part of this for areas now receiving services; part for areas not now receiving services

B--This means that the areas will have to have requirements of no more than 7,000 sq.' lot size. Allowance will have to be made for five single family units per acre.

C-- It is understood that this type of zone will be dispersed adequately throughout the town.

2) Amendment of the PUD ordinance.

We propose a policy of the whole town being open to PUD zoning, with certain areas being stipulated as primarily for PUDs, especially in east Penfield.

Forty percent of the units of a PUD should be allowed for low/moderate income

units. The developer, in his program application, should be required to meet this criterion and guarantee price levels on the sale of property.

3) Town House Requirements

We believe that the present specifications and density limitations for town houses are unduly stringent.

We propose that this portion of the ordinance be rewritten on a health oriented basis and that other arbitrary specifications, such as floor space, be omitted. A requirement of 700 sq.' may be reasonable but not beyond that.

4) Multiple Residence

Unit per acre limitations should be raised to eighteen, with a requirement that buildings not cover more than 30% of the total lot size.

Furthermore of the apartments 25% should be able to be rented for under $150.00 per month and 25% should be able to be rented for under $185.00.

-end-

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT
	*	Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS:
TOWN OF WAYLAND)

ANDALINO ORTIZ, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing in the Town of Springwater, New York; my mailing address is Rural Delivery 1, Wright's Road, Box 202, Wayland, New York. I am one of the plaintiffs in the above noted action, bringing this action on my own behalf and on behalf of all persons similarly situated. My claim is that I, as a property owner of the City of Rochester, am forced to pay a greater

proportionate share of real estate taxes to the City of Rochester than other residents of the City of Rochester area to their respective towns because the City of Rochester has and must continue to build more than its fair share of tax abated housing projects within the territorial limits of the City of Rochester to meet low and moderate income housing requirements of the Rochester metropolitan area - all by reason of the exclusionary practices of the defendants. Additionally, my claim is that I, as a citizen of Spanish/Puerto Rican extraction am being denied the right and/or opportunity to reside in the Town of Penfield because of my race - all due to the illegal, unconstitutional and exclusionary practices

of the Town of Penfield which have the effect of excluding persons of Spanish/ Puerto Rican extraction from renting, buying and/or living in the Town of Penfield by reason of **there** being allowed no low, moderate income housing. By virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield, all of which have had the effect of preventing me from living near work in the Town of Penfield. I have been put to great expense of time and money in commuting to employment in the Town of Penfield. I make this affidavit in opposition to the defendants' motion herein to dismiss my complaint.

2. I was born in Puerto Rico in 1925; I came to the mainland, United States in 1947. I married my wife, Maria,

in Pennsylvania in 1948. We have seven children, Zarchairah, age 22, Rebecca, age 19, Juan, age 18, Andalino, Jr., age 17, Marielena, age 15, Christopher, age 12, and Christina, age 10. I came to Rochester with my wife and family in 1966. All of our children with the exception of Zarchairah, still live with my wife and myself.

3. When coming to Rochester in 1966, my wife and I sought a place to live which would be within reasonable distance of my job and which would provide an environment where we could live and bring up our children, giving them the best education available in public schools, the maximum opportunity to share in cultural events of the community, use the public libraries, public parks, etc.

4. My job on coming to Rochester and continuing until May, 1972, was as a janitor at St. Joseph's, Gebard Road, Penfield, New York. My gross salary per week was $130.00; net $102.00 per week; gross annual income, $6,760.00. On our first arriving in Rochester, my wife, Maria, also worked part time as a domestic; she averaged about two days work a week at $12.00 a day. Figuring that we could afford to spend about one-fourth of our monthly income on providing for our housing needs, our family could afford to pay $126.00 a month to supply housing for us when we first came to Rochester.

5. I found that housing in my price range, low and moderate income housing, was impossible to find in the Rochester metropolitan area except in the center city of the city of Rochester.

We had no choice in housing but to settle for renting of housing in the decaying section of Rochester's center city. That rented housing was inadequate in terms of space for my family and environment but it was the only choice in housing that a person of my minority and low income status had.

6. In 1967, my wife Maria secured more steady employment at St. Joseph's, Gerard Road, Penfield, New York. She had an income of $80.00 per week gross and a net income of $65.00 a week. Thereafter my wife Maria secured full time employment as an interpreter for the health clinic at the University of Rochester in Rochester, New York. She now has a gross income of $119.00 per week; net income of $94.50 a week; a total of $6,188.00 gross income a year. I am

presently unemployed.

7. I found renting a home in Rochester center city to be most unsatisfactory. For example, one of the places where our family first resided on Central Park was in terrible condition and entirely inadequate for my family. There were one inch spaces around the windows causing the place to be continually drafty and almost impossible to heat in the winter. There was water standing in the cellar. The toilet was broken. The house was infested with roaches. There were only three bedrooms for nine people.

8. With both myself and my wife working either full time or part time, we immediately began to save our money and look for a house that we might be able to afford buying. Again our

search was necessarily concentrated in the Rochester center city since there was no housing on the market anywhere in the Rochester metropolitan area which we could afford on our low income budget. We finally save $500.00 which was enough for a down payment on a house at 5 Evergreen Street,Rochester, New York. The selling price of the house was $10,000.00 and we obligated ourselves on a mortgage of $9,500.00.

9. Even though we now had our own home in Rochester center city, I was still dissatisfied to have my children growing up in a decaying center city, "ghetto" environment. In order to break free of the environment of living and rearing my children in the decaying inner city, I began to explore the possibilities of moving my family to one

of the surrounding towns in the Rochester metropolitan area. Since my job at that time and continuing until May of 1972 was in the Town of Penfield, I initiated inquiries about renting and/or buying a home in the Town of Penfield. However, because of my income being low or moderate, I found that there were no apartment units large enough to house my family of wife and seven children, nor were there apartment units that were available reasonably priced so that I could even afford to rent the largest apartment unit. I have been reading ads in the Rochester metropolitan newspapers since coming to Rochester in 1966 and during that time and to the present time, I have not located either rental housing or housing to buy in Penfield. Accord-

ing to information recently assembled by Metro-Act of Rochester and which I have seen, a three bedroom house in the Town of Penfield rents for a minimum of $250.00 a month; the tenant then has to pay additional for all utilities. According to this information a three bedroom apartment in the Town of Penfield now rents for $300.00 a month plus electricity; it is virtually impossible to find a three bedroom house in the Town of Penfield for less than $30,000.00. Thus my efforts to locate either rental or purchased housing in the Town of Penfield was unsuccessful because of either the generally inadequate space in most rental units or the impossible high rents of the few rental units with enough space and/or the impossibly high

cost of buying and/or renting a home in Penfield. (A summary of rental information in the Town of Penfield is attached hereto and made a part hereof as Exhibit A.)

10. Finally, in 1968 I located a dilapidated home outside of Wayland, New York, (Town of Springwater). The selling price of the house was $9,500.00. I paid $4,000.00 and obligated myself on a mortgage of $5,500.00 to the First National Bank of Wayland for seven years. Because the house was in such poor condition, (the house was uninhabitable when I bought it), I immediately needed to obligate myself for a home improvement loan of $1,500.00 to the First National Bank of Wayland and another home improvement loan for $1,400.00 to

Beneficial Finance. The house in Wayland had been unoccupied for some time except for one room. Over a period of time, I worked on the house so that it became habitable. I replaced the roof; I put in all new window glass; I replaced all the walls either with dry wall or put paneling on the existing walls; I redid all the ceilings by putting in lowered ceilings. I installed wiring to the upstairs of the house where there had been no wiring.

11. After making all of these major repairs, the house was habitable for my family year round and in 1971 we moved to **the house outside Wayland.** Since 1971, we have rented our house in Rochester at 5 Evergreen Street. The rent I receive from the house in

Rochester is just enough to defray the mortgage and other expenses on the house.

12. The house on Wright's Road outside Wayland, New York (Town of Springwater), is a frame house consisting of ten rooms - six bedrooms, a kitchen, a dining room, a living room and a family room. The expenses for living in my house outside Wayland, New York (Town of Springwater), include the following:

1. Monthly mortgage payment to First National Bank of Wayland, $83.69 per month.

2. Monthly payment on home improvement loan to First National Bank of Wayland, New York, $59.88.

3. Monthly payment on home improvement loan to Beneficial Finance - $41.00.

4. Insurance on house - $12.00

per month ($144.00 per year).

5. Property taxes - $24.00 per month ($288.00 per year).

6. Heat - $33.33 per month ($415.00 per year).

7. Electricity - $32.00 per month ($386.00 per year).

There is a well on the property from which we get water.

13. Since I was unable to locate housing near my work in the Town of Penfield (employment dating from my arriving in Rochester in 1966 to May 1972) I have been forced by reason of the exclusionary practices of the Town of Penfield to reside in Wayland, New York, Town of Springwater (1971 through May 1972) forty-two miles from my work in Penfield. I worked five days a week, eight hours a day at St. Joseph's. I

was at work by 7:30 in the morning. Travel one way to the job in Penfield took at least one hour and ten minutes one way - in bad weather the time involved one way to work was about two hours. The maximum distance from my job if I had been able to live in the Town of Penfield would have involved driving time of no more than twenty minutes to the job at St. Joseph's.

14. I use a 1966 Chevrolet car to commute to work or, occasionally, a pick up truck. The car or truck consume gasoline at a rate of thirteen miles per gallon; thus, every day my transportation to and from work in Penfield required 6.5 gallons of gasoline - gasoline which cost me 39¢ to 43¢ a gallon. This means that

there was at least $2.56 involved each day in gasoline costs for my automobile or $12.80 involved in gasoline costs alone for my automobile to and from my work each week. Thus, in costs of gasoline alone, commuting to and from the job in Penfield has cost me $666.00 per year.

15. For my tax dollar in the Town of Springwater, to the best of my information, I am provided with very little service. On the basis of information assembled and called to my attention by Metro Act of Rochester, Inc., the following is a brief outline of the services available to me and my family in my community:

A. My six children who live with me attend Wayland Central School which is a twenty mile bus ride from

our home. I have two children in the twelfth grade, one child in the tenth grade, one child in the ninth grade, one child in the fourth grade and one child in the fifth grade. The Wayland Central School consists of one building which houses kindergarten through high school and includes a swimming pool and three gyms (two gyms for elementary level; one gym for high school level), an auditorium, two lunch rooms (one for elementary level; one for secondary level).

The faculty of Wayland Central School numbers one hundred with three administrators; there are one thousand students in grades kindergarten through six and seven hundred students in grades seven through twelve. Average class size at the elementary level is 28 through 30 with one slow section of

20 pupils. In the secondary level, average class size is 25 to 30 with a slow section of 18-20 pupils. Teacher/ pupil ratio at the secondary level is 110 students per teacher.

The schools offers special services of a psychologist one day a week. An assistant or an intern is available five days per week through the BOCES program of Livingston and Steuben Counties. There are two guidance teachers, two special reading teachers.

Curriculum of the school at the elementary level is a standard curriculum including music and art. There are no languages, however, taught in the elementary grades. Curriculum in grades seven through twelve is a standard curriculum with home making,

agriculture and industrial arts also offered. French, German and Latin are offered in grades nine through twelve. All persons are required to take regents exams; there is no non-regents program offered.

Activities offered by this school system at the elementary level include band and chorus. At the secondary level there are two bands, a chorus, a library club, a future teachers club, a future business leaders club, future home makers, Latin club, newspaper, year-book, art club and drama group. At the elementary level, there is fifth and sixth grade intramural baseball and track. At the secondary level, there are all sports except football - including baseball, soccer, track, wrestling, tennis, golf, skiing, swimming.

B. The Town of Springwater provides no garbage or trash collection service for the residents. A private company is available for contract at the cost of 75¢ per week, one pickup per week. Highways are maintained in the Town of Springwater on a budget of $32,400.00 for maintenance, $45,837.00 for machinery and new equipment and $42,000.00 for snow removal. The Town of Springwater budget for its volunteer fire department (department composed of twenty to thirty men who are active), was $9,350.00 for 1971. There is one fire station. There is one volunteer ambulance service available to residents of Spring-water seven days a week, which is financed by private contributions.

C. The Town of Springwater recreation budget is $600.00 per year.

The town sponsors fall, winter and spring roller skating for all ages, once a week, and a boys' basketball program once a week. There is no summer recreation program and no adult recreation program. The closest public library for the use of my family (outside of the Wayland Central School library, which my children use) is the Wayland village library. Wayland is located about five or six miles from where we live. The library is open twenty hours per week and is financed $1,000 per year from the town, $1,100.00 a year from the village,and $1,350.00 from Community Chest and $1,020.00 from miscellaneous income. The library belongs to the Southern Tier Library System. There are records in addition to books for loan. There are no films

available nor are there special programs provided by the library. The village of Wayland also has a recreation program on a budget of approximately $2,000.00 per year. There is a summer playground program for ages six to fifteen as well as a swimming program. There are no adult programs. There is no youth center nor senior citizen program.

16. However, if I were not excluded from residing in the Town of Penfield by reason of the exclusionary practices of the defendants, I understand, based on information related to me by residents of the Town of Penfield and Metro Act members, that I would be able to take advantage of the Penfield Public School system which offers services as follows:

A. There are six elementary schools, two junior high schools and one senior high school in the Penfield Central School system. The average class size, grades one through six is 26 students to one teacher. The class sizes vary at the junior and senior high level depending on the course.

B. The Penfield Central School District offers the following special services. The district employs one full time speech teacher, one social worker, two psychologists and three counselors for the elementary levels. In the secondary schools there are nine full time counselors. There is one full time physician. The district has additional mental health services which include three consulting physicians, two of whom are on the staff of the depart-

ment of pediatrics of the University of Rochester Medical School. These services are paid for by the school district.

C. The Penfield Central School District offers the following reading services. There are four special reading teachers for the district plus one school tutor who is paid by the hour to work with youngsters who have very special, individual needs. There is a reading resource center at one of the elementary schools.

D. The Penfield Central School District offers special education. Students with perceptual handicaps and various learning disorders attend special programs at BOCES - a central school for these services supported by the districts in the county. There are specialized teachers and programing

designed for these youngsters. (A plan is being developed over the next five years for the return of many of the special education students to Penfield so that these students may attend regular classes and the district will provide special resource people to aid the children.)

17. I am informed that students in the Penfield school system, according to tests, appear to be doing better than comparable youngsters in inner city and other county schools. For example: reading of a third grade student - percentage of students reading below minimum competency - Penfield, 14%, State, 27%, Monroe County, 22%, City, 23%. Third grade math - percentage below minimum competency- Penfield, 7%, State, 21%, County, 18%. Reading, sixth grade, percentage of students below minimum competency - Penfield ,10%, State, 30%, County, 22%. Sixth grade math - percentage below minimum competency - Penfield, 12%, State, 33%, County, 26%.

I understand that in Penfield, the per-pupil cost from non-Federal funds ending June, 1971 was $1,487.49. Eighty percent (80%) of Penfield youngsters go on to higher education versus 20% from the city.

18. According to my information, the curriculum in the Penfield Central School District includes basic skill program for slow learning students, grades 4 through 12. An honors program is maintained for students who wish to accelerate learning. A regents program is designed for academic orientation and students who want to attend college.

There is a non-regents program for the non-college bound. Seniors are offered advanced placement courses approved by colleges for possible credit toward a college degree. A vocational program is available in addition to regular classes at the high school level. Additionally, there is a music program consisting of general music for grades 1 through 8 in every school. There is a Suyuki violin program offered in every elementary school. Instrumental instruction and music theory is offered at the high school level.

A. General art classes are offered for grades 1 through 8 in every school. An elective art program which offers a wide range from pottery to mechanical drawing is available in grades 9 through 12.

B. Business education is offered to students in grades 9 through 12. There are a wide variety of courses offered including such courses as typing, bookkeeping, etc.

C. Distributive education courses are available in grades 10 through 12. Students majoring in retailing have classes at school combined with partial employment for pay and credit. This program is coordinated by the school with preparation and evaluation.

D. Home economics is available from grades 7 through 12. There is a wide range of courses from developing work skills to functioning in a household and partnership.

E. A comprehensive industrial arts program is available in grades 7

through 12. Penfield Central School staff is involved in research during their paid summer working hours to develop a curriculum of courses directly related to daily living. Such courses would include technical chemistry, life science and essentials of math.

19. I understand that Penfield schools offer athletic programs including physical education programs for grades 1 through 12. There is a plan to extend this physical education program to kindergarten youngsters. An intramural program for elementary and junior high is operated by the school system for students on after school hours. In the high school, there is a fall and spring interscholastic program. Interschool competition for girls who excel in intramurals consists of six programs.

There are also interscholastic programs for girls, competition in gymnastics, grades 9 through 12. In the fall, girls have soccer and field hockey; in the winter, basketball and volleyball and in the spring, swimming and softball.

20. I understand that boys have interscholastic competition provided in grades 7 through 9 on a modified sports program for soccer, football, basketball and cross country. In grades 9 through 12, boys have available interscholastic competition in soccer, football, cross country, basketball, swimming, wrestling, ice hockey, skiing, track, tennis, baseball and golf.

21. According to my information, the Town of Penfield provides recreation services to residents of the Town of Penfield. Those services include

programs during the summer of 1) playground program (7 weeks - 5¢ to 25¢ charge for arts and crafts) for children of different ages, 2) tennis lessons ($1.00 for all lessons), 3) women's tennis, 4) swimming lessons for children, 5) swimming lessons for adults, 6) softball leagus. Fall and winter sports - 1) boys' basketball ($1.00 registration), 2) gymnastics - elementary and junior high years, 3) basketball program for high school boys and young adults. Services to senior citizens, recreational activities, referral services and crafts, arts, and film programs that are available through the Penfield recreation department.

22. I understand that the Town of Penfield maintains one park, Harris Whaler Town Park; there is a skating rink in this

park and plans for development include tennis courts, baseball diamonds, playgrounds and picnic areas.

23. I understand that the Town of Penfield recreation department sponsors a Penfield community orchestra which meets throughout the year and gives free concerts to the community periodically. Additionally, the recreation department sponsors the Penfield Players which is a group which performs plays in the community at public performances. Admission is charged for performances, but anyone interested in joining may join the Penfield Players. The 1972 Parks and Recreation budget for the Town of Penfield was $60,277.00.

24. According to my information, the Penfield Free Library is a member of the Monroe County Library System and shares

in all services - loaning books, records, films - and in the training of librarians. It was established by an organization of private individuals and is maintained and controlled by an organization of private individuals for the free use of the public. In 1970, the Penfield Free Library had an inventory of 33,152 volumes, 151 periodicals, 1,068 recordings and 60 large print books. It provides special (free) programs for the community; film programs for adults; weekly story hour for pre-school children; Lunch 'n Listen book reviews for adults. The library is open 7 days a week from 10:00 A.M. to 12:00 noon on Mondays, Tuesdays, Thursdays and Fridays;from 2:00 P.M. to 9:00 P.M. on Mondays, Thursdays, and Fridays; on Saturday from 2:00 P.M. to 5:00 P.M. and on Sundays from 1:00 P.M.

to 5:00 P.M. The Town of Penfield's 1972 budget for the library is $70,816.00.

25. I understand that the Town of Penfield is served by volunteer firemen. Volunteers are well trained and the best in fire fighting equipment is available. Residents of the Town of Penfield have some of the lowest fire insurance rates of any town in the county. Each property owner is assessed for support of the Fire Department in the fire district where they live $1.55 per $1,000.00 assessed valuation. The department operates one fire station and is seeking voter approval for an additional station.

26. According to my information, the volunteer ambulance service in the Town of Penfield serves the entire town 24 hours a day including holidays except

from 6:00 A.M. to 5:00 P.M. on Monday and 6:00 A.M. to 9:00 A.M. on Tuesday.

27. Upon information and belief, garbage and trash collection in the Town of Penfield is provided to residents by two private firms. Monroe Disposal makes one collection per week and the cost to residents is $5.35 including tax per month. Youngblood and Smith Disposal Systems makes one collection per week and cost to residents is $13.91 every three months including tax. In addition, Youngblood and Smith Disposal Systems offers free recycling service to regular customers and operates, for free, the town's recycling center. The Penfield Highway Department provides an annual free spring pick-up service for hard to dispose of items. Cost to the Town of

Penfield - approximately $25,000.00 annually.

28. Upon information and belief, The Town of Penfield highway department employs 22 persons. The department is responsible for ice and snow removal on state, county and town roads in the winter. It is also responsible for road maintenance on county and town roads in the summer. The department is equiped with the most modern equipment for snow and ice control, road building, and maintenance. The 1972 budget for the Penfield Highway Department is: total highway - $584,433.08, road building, repair - $173,000.00, machinery repair - $115,000.00, snow removal and miscellaneous $295,000.00. There are 71.53 miles of town highways, 25.05 miles of state high-

ways, 35.33 miles of county highways in the Town of Penfield.

29. I find that living in the Town of Springwater, access to stores is limited and my shopping opportunities are thereby limited. We need to go either to Dansville or Wayland - each about five or six miles away. In Dansville there are three food stores and a few clothing and food stores. However, my wife tries to concentrate her buying in Rochester because she thinks that prices are cheaper there. On the basis of information supplied to me by Metro Act of Rochester, Inc., I understand that the Town of Penfield has two large shopping plazas - Panorama and Eastway; the latter shopping plaza includes a branch of Sibley's department stores.

Additionally, there are quite a number of other smaller shopping areas in Penfield which include food markets, drug stores, dry cleaning businesses.

30. My wife and I have always considered it desirable that our children have summer jobs. While we lived with them in the city, our girls were able to secure jobs such as nurses aides; the boys were able to find handymen jobs in the summers. However, since we have been living in the Town of Springwater, our children have not been able to find any summer employment. There is practically no industry in Springwater and there are only a couple of stores. According to information furnished me by Metro Act of Rochester, Inc., if we were to be living in the Town of Penfield, there would be

summer employment available for our children. I understand that the Youth Council in Penfield runs an employment center. There is employment for paper boys, mowing of lawns, babysitting and packaging and carrying out groceries.

31. The plight of myself and my family in being a member of a minority and of low income is shared by many other persons. I understand that there are approximately 18,000 persons of Puerto Rican/Spanish extraction or 19,500 Latins living in the Rochester area. Practically all of those are now living in Rochester center city - just as I and my family were prior to our moving to the Town of Springwater to escape the decaying inner city environment. These persons, like myself and my family,

are continually harmed in a very real and tangible fashion by the effect of the exclusionary practices of the Town of Penfield. Because our living environments are dictated by laws, practices and policies which prevent us from living where we might wish, we are forced, for example, to accept as a way of life poor schools for our children, reduced job opportunities, inferior community services and added expenses of reaching employment.

/s/ Andelino Ortiz
ANDELINO ORTIZ

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EXHIBIT A

PENFIELD

APARTMENT PROJECTS AND TOWN HOUSES

Project	Rentals			
	Studio	1BR	2BR	3 BR
*Penfield Village 6 units at 165 6 " at 190		165-180	190-210	
*Penfield White Oaks		175	195	
*Pennwood		184.50	195	
*Skyline	155-175	175-190	210-225	
*Penfield Park T.H. 105 units			260	300
*Brook Hill		190	225-275	
*Lost Mountain Manor		235-245	285-295	
Mountain Lane		190	225	
* *Creek Hill		165(175)	190(195)	

EXHIBIT A

Project	Rentals			
	Studio	1BR	2BR	3BR
*Eastway Manor		193	220	
*Liberty Manor (1963)	125 6 units	135-145 18 units		
*Avalon		177	188	

* Includes unilities except electricity

** Rentals increasing to $175 and $195 effective 6/72

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Windson-Square T.H. for sale	2BR	3BR	4BR
	28,950-30,000	31,000 36,000	36,000

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

CLARA BROADNAX, duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 87 Jefferson Street, Rochester, New York. I am a person of the black race. I am one of the plaintiffs in the above noted lawsuit; I make this affidavit in opposition to the motion of the defendants to dismiss my complaint on the ground that I have no standing to sue the Town of Penfield for what I believe to be

practices, policies and customs of excluding persons of my race from living in the Town of Penfield. As I outline more particularly in the succeeding paragraphs in this affidavit, I believe that the policies of the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative action to prevent amendments to and variances from their ordinances which would allow the construction of low and moderate income housing for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York, guaranteeing to me, among other rights, my right to travel,

my right to associate with other persons, my right to live in an integrated environment, my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I was born in Rochester, New York but shortly after birth moved to Caledonia, New York where I grew up. In 1968, I came back to Rochester to enroll in a Concentrated Employment Program, find a job and live.

3. Since Concentrated Employment Program paid me only $30.00 a week, it was necessary for me to receive financial assistance from Monroe County Social Welfare Department - besides myself there are six children, Dale Renee, 12, Curtis Eugene, 11, Hiram, 7, Jay Scott, 6, Sonja Ann, 4 and Yolanda 2. I am divorced from my husband; I receive no support from him

for me or my children; he no longer resides in the State of New York, according to my information.

4. While the Welfare Department was undertaking to pay the costs of my rent for housing in Rochester, the Welfare Department gave ve no assistance in locating housing on coming to Rochester. I therefore, bought newspapers and read ads and walked to look for apartments until I found the place where I now reside. I found that there was virtually no choice of housing in the Rochester area. The only other choice of a place to rent that I had at the time I needed an apartment was an apartment which was in obviously very bad shape and on which the landlord wanted a rent of $175.00 a month. The apartment that I did rent was in terrible shape but it

had a rent of only $80.00 per month.

5. On locating the apartment, I contacted the Welfare Department for them to screen the apartment to see whether it complied with Welfare's standards for renting. I was first told that the apartment was approved for my renting as a welfare recepient. Once I moved in, however, Welfare Department personnel advised me that the apartment had had numerous housing code violations for four years and it was not an approved apartment. However, since I was already in the apartment and since I could find no other housing, the Welfare Department agreed to pay the rent.

6. The apartment at 87 Jefferson Street is an upstairs apartment in the house at that address. I have five rooms - two bedrooms, a living room, kitchen

and dining room. There is a private landlord.

7. The apartment and house is in deplorable condition - conditions existing from the time I moved in and steadily getting worse in the four years that I have been there. The landlord was cited for many housing violations before I moved in and since I have been living there he has been cited for many more violations but conditions are never really corrected. The situation finally became so bad that I requested a hearing of the Welfare Department at which time I called to their attention in photographs and statements the impossible living conditions in the apartment. I advised the Welfare Department that they would need to take the responsibility of applying money to pay the rent, that I could not

in good conscience take money that the Welfare Department gave me and give it to a landlord as rent for an apartment in such deplorable condition. The Welfare Department, thereafter, has withheld the rent allotment to me and is now withholding rent payments to the landlord. Thus, no one is paying rent on the apartment at the present time because of its uninhabitable conditions.

8. The defects in our apartment include many leaks in the roof, bad wiring, roach infestation, rat and mice infestation, crumbling house foundation, broken front door, broken hot water heater, etc. There are at least six holes in the roof. When it rains, the rain comes down through the ceiling and leaks into the living room and kitchen. The rain leaks so heavily that it follows the

electric wiring and flows from the light fixtures.

9. The wiring in the house is so old and defective that there is some electrical short in the apartment at least every two weeks which requires our resetting fuses. The house foundation is now crumbling very badly. Since the foundation has started crumbling, there have been mice and rats coming into the house. The mice and rat infestation is now so bad that they come through the heating vents into the rooms of the apartment itself. I have already caught two mice in the children's bed. To have rats and mice infesting the house causes great anxiety among the children. One way that I try to reduce the danger of my children getting bitten is to leave the light on in the bedroom all night.

The children are now afraid to go to sleep unless there is a light on in the room.

10 There are so many roaches infesting the house that it is not safe even to allow cereal to remain out on a table; any food left out will be immediately spoiled by roaches crawling over it. About four months ago, the hot water heater for our apartment began leaking. To date, although there has been constant complaint, the landlord has not repaired the hot water heater. Thus, for the past four months, I have not even had hot water in the house for bathing or dish washing purposes.

11. The front door of the apartment is in such poor repair that it does not fit. In the winter, snow constantly blows in around the door. Because the door

does not fit, the apartment is constantly drafty. I pay $31.00 a week for fuel (oil). The drafty condition in the apartment is particularly troublesome for me since my son, Jay Scott, has had a bad asthmatic condition since birth. The house did not have even a heat vent in one room so I changed that room from the children's room to my room so that there would at least be some heat for them. In the winter of 1971, the furnace stopped operating altogether. The fuel company man advised me that the heating unit was producint carbon monoxide because of a repair that needed to be made in the furnace and he said therefore, that it was too dangerous to light the furnace. Although my landlord was called about the problem early in the evening, the intervention of the Rochester Fire Department on my behalf was necessary

before the necessary repairs were made very early the next morning.

12. The outside of the house is dilapidated as well - boards are rotting and there is the constant problem of lead paint chipping from the house. The pealing lead paint chips are a particular concern for me with my young children. Young children eating paint chips and thereby consuming lead, develop serious behavioral problems, brain damange and retardation.

13. Since January, 1970, I have been employed by the City of Rochester School District as a School Plan Advisor to the Neighborhood. I receive a net income every two weeks of $212.00 or a net income of $106.00 a week. Because my income is so low and because I have the full support of myself and my six

children, I receive an additional $35.00 every two weeks from the Monroe County Welfare Department. Because my present housing in Rochester is so inadequate, I only have four of my children living with me in the apartment on Jefferson Avenue. Two of my children, Dale Renee and Curtis Eugene, I have living in Caledonia, New York. (I believe my children are also receiving a better education in Caledonia than they would receive in the Rochester City Schools.) Presently, I have in Rochester, only one bedroom for all of my children and it is just impossible for me to have my two older children here with me. As it is now, I have all of my children, both boys and girls, sleeping in one bedroom. Since they are becoming older, this creates increasing problems for me. Now the girls change in the bath-

room and the boys change in the bedroom. But as they grow older, there is a growing feeling of their living on top of each other, not having any space even to keep their own clothes separately and not having any privacy for themselves.

14. My dilapidated house is located in a decaying part of Rochester inner city. Violent crime is high in the area, police protection is unsatisfactory, there are no parks and community services are poor. Our community is yet haunted by a kidnapping, rape and murder of a young child in our area last summer. We have had six break-ins within
No parent in the neighborhood can feel safe in allowing his/her children to be alone anywhere in the neighborhood after dark. Adults also consider it unsafe to be on the streets after dark.

15. There is a bad traffic problem in our area, as well. My neighbor has a child killed by being hit by a car on the way to school. There have been three children hit in the front of my apartment within the last two years. We have constantly complained for more traffic control and direction but all to no effect.

16. I have been trying for some time now to find some alternative to living in dilapidated housing in a decaying environment. However, because my income is low, $494.00 net per month, including welfare assistance, I have only about $121.00 per month that I can devote to my housing budget for myself and my children. A person with only $121.00 to spend on rent per month, however, can

just not find housing to rent in the Rochester area for that money. I understand that a three bedroom apartment in the Town of Penfield rents for $300.00 per month - far beyond my reach. I would like to find a place with at least four bedrooms. With my children being older, I really do need a bedroom for myself, a bedroom for the boys, a bedroom for my oldest daughter and a bedroom for the other girls. I want to live in an environment where there will be some backyard for my children to play in and where I and my children will have some feeling of privacy - not with everyone living on top of everyone else. I feel that if I could locate a decent house in a decent environment that I could expect that if there were problems, there would

be action on those problems. For example, if I lived in a good neighborhood and called the police, I could expect that the police would come promptly and take prompt action rather than coming belatedly and not expressing any concern about the problem. I would feel that there would be adequate community services such as garbage disposal and prompt attention to problems such as mice, rats or roaches. If I lived in a decent house on a decent street, I feel that I could be comfortable when my children would walk on the streets to and from school and after school. There would be playground space for my children in addition to our own yard.

17. Recently, I have been considering trying to afford to buy a house. I could not possibly afford something more than $11,000.00 and probably should not pay

more than $9,000.00. However, there is certainly housing of that price available nowhere in the Rochester area except in the Rochester center city and that housing is old, decaying and dilapidated; I could expect that there would be much expense of continual repair.

18. I am working for a decent place to live and I don't have it. I am unable to get it. I believe that the Town of Penfield by its zoning laws and policies to exclude construction of low and moderate income housing is depriving me of many rights, including my right to decent housing. There are many people in my situation. I understand that the 1970 census shows that there are 52,218 blacks in the Rochester metropolitan area (Monroe County), 49,647 of those blacks live in Rochester. I

believe that I adequately represent the blacks of the Rochester community who because of their minority and low income status are excluded from an opportunity to live in the Town of Penfield.

/s/ Clara Broadnax

CLARA BROADNAX

Jurat
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In
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THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

ANGELA REYES, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 128 Alphonse Street, Rochester, New York. I am a person of the Puerto Rican race. I am one of the plaintiffs in the above noted action. This affidavit is made in opposition to the defendant's motion in this lawsuit to dismiss my complaint against defendants on the ground that I have no standing to sue the Town of Penfield

for what I believe to be policies, practices, customs and usages of excluding persons of my race from living in the Town of Penfield. I believe that the policies in the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative actions to prevent variances in their ordinance which would allow the construction of low and moderate income housing, for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York, guaranteeing to me among other rights, my right to travel, my right to associate with other persons, my right to live in an integrated environ-

ment, my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I have for the past year been employed as a Task Force developer with the Rochester Model Cities program. My gross income per year in this employment is $8,400.00. I have a bi-weekly gross income of $323.00 or a net bi-weekly income of $285.00. My husband, Melbil, is also employed. For the past year he has been working at Rochester Jobs, Inc. His gross annual income is $6,000.00 - a weekly gross income of $115.00 or a weekly net income of $89.00. My husband and I have two children, two boys ages two and three.

3. I was born in Puerto Rico and moved to Rochester with my parents at the age of three years. With my parents

being members of a minority race and with my father coming to this country without means, I have known from childhood the circumstances of being poor and a minority and therefore segregated to living in a community of sub-standard housing and community services in a decaying part of a center city. I was one of seven children; it was necessary at times for my parents to seek welfare payments to supplement our income in order for our rent payments to be made. My vivid recollection of childhood is a series of moves from one house to another in fairly rapid succession - all in the hope that the next house would be better accomodation, provide more space and be more habitable. At one time, our family of seven children and two adults was crowded into a four room unit consisting

of a kitchen, two bedrooms and a living room. All the houses in the center city that we lived in were uniformly old and infested with roaches and rats. My moves with my family during childhood and adolescence included moves from Hand Street to Scio Street from Scio to Woodward Street from Woodward to Scio Street from Scio to another location on Scio Street from Scio to Hartford Street from Hartford to Mudge Place from Mudge Place to Woodward Street from Woodward Street to Ontario Street.

4. Along with the dilapidated housing in the center city to which a family of a minority and low income such as ours was confined, was the lack of adequate police protection and community services in general. An individual would not walk alone or perhaps not at all

after dark in the Scio Street area. A parent would never, even during the day, allow his/her children outside to play alone in this area. When we were living on Woodward Street, we were robbed of our television and record player. The area is reputed for the high incidents of violent crimes and is now an area for large drug traffic.

5. Moving to our house where we presently reside at 128 Alphonse Street, Rochester, New York, was the culmination of my husband and my shopping around the entire Rochester area to locate a house which we could afford to buy. We began this search by contacting a real estate broker and finally securing the help and interest of one real estate broker. Our net disposable income being $924.00 per month between both my husband and myself

we can afford approximately $231.00 per month for housing. The price range of house, therefore, that we could consider, would be a house not to exceed $20,000.00 in price.

6. Because my husband and I were interested in not only buying a house of our own but also in so buying to place ourselves and our children in an environment which would provide adequate community services,police protection and expecially, good public schools, our investigation for housing included the Rochester bedroom communities of Webster, Irondequoit, Penfield and Perinton. Our search over a period of two years led us to no possible purchase in any of these towns. In the Town of Webster, properties ran $25,000.00 and up, $5,000.00 beyond our budget. In the Town of Irondequoit, the properties

were above $20,000.00 and were properties on large lots which had very high taxes. In the Town of Perinton, properties began no lower than $23,000.00 and taxes anounted to another $2,000.00 a year on the house and large lot. In the Town of Penfield, there was no possibility of finding a house costing less than $35,000.00 - far beyond our budget without taking into consideration the high taxes on the house and land.

7. The house we found, 128 Alphonse Street, Rochester, New York, is a house that my husband and I finally located on our own through a contact of my husband at his job. This house is located still in Rochester center city; therefore we have not been able to achieve our goal of changing our atmosphere, environment and outlook, but have at least found a house

that we could afford. The sale price of this house was $13,800.00 including $1,200.00 which we will need to pay the bank for closing costs and down payments. We are now renting the house from Community Savings Bank of Rochester pending papers being cleared for our receiving a mortgage from Community Savings Bank with FHA approval. The house on Alphonse Street is a house which the Metropolitan Rochester Foundation - a non-profit group in Rochester which rehabilitates old houses - bought and completely refurbished and then sold to Community Savings Bank for resale. The house which Metropolitan Rochester Foundation buys are very frequently just shells of houses which have to be completely refurbished in every respect. For example, our house on Alphonse has had a new rood, new gutters, new win-

dows and window sills and sashes, new partitions, lowered ceilings, new kitchen, new water heater and new electrical system installed. There has been new siding put on the outside and the outside has been completely painted. A new driveway has been installed.

8. We now pay Community Savings Bank $149.00 a month rent; as soon as the FHA mortgage is approved we will be paying $149.00 a month plus approximately $36.00 a month taxes and $7.00 a month insurance on the house. Additionally, we will have utility expenses on the house amounting to about $30.00 a month. Thus we will be spending at least $222.00 a month on our house without taking into account the possibility of the yearly upkeep and improvements on this old house.

9. The predicament that I and

my husband have faced in being members of a minority with limited incomes and finding no housing in any of the Rochester suburban communities, including the Town of Penfield, which is available for us to purchase is a predicament that is shared by approximately 18,000 persons who are Puerto Rican or approximately 19,500 persons who are Latin. Because persons in the Puerto-Rican/Latin population are like us, a minority population and of limited incomes, all of us live in the Rochester inner city, either in dilapidated housing like I grew up in or in reconstructed housing like my husband and I now live in.

10. Unless there is action taken to prevent the Rochester suburban communities, like the Town of Penfield, from maintaining the zoning ordinances, practices and

policies, calculated to exclude low and moderate income housing construction, my family will never have the opportunity to select a house in a decent, good environment. The selection of the environment of our housing is particularly important to me since I am very concerned that my children receive the best possible public education. Because I wanted to take advantage of what I considered to be superior schools systems - superior school systems to the public school systems of the City of Rochester - in the suburban towns, my husband and I made a long fruitless effort to locate our house in one of the towns adjacent to Rochester.

11. I believe, therefore, that the practices of the Town of Penfield which exclude the construction of low,

moderate income housing have directly affected me adversely and have deprived me of many opportunities and rights to which I am guaranteed and entitled. I believe that I adequately represent, furthermore, a large number of Puerto Ricans of limited income who by virtue of these same practices and policies of the Town of Penfield have no real choice in housing.

/s/ Angela Reyes
ANGELA REYES

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THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

Title Omitted In Printing *

AFFIDAVIT

CIVIL ACTION
No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

ROSA SINKLER, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at Apartment 7-F, 10 Vienna Street, Rochester, New York. I am a person of the black race. I am one of the plaintiffs in the above noted action and make this affidavit in opposition to the motion of the defendants herein to dismiss my complaint against the defendants on the ground that I have

no standing to sue the Town of Penfield for what I believe to be policies, practices, customs and usages of excluding persons of my race from living in the Town of Penfield. I believe that the policies of the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative actions to prevent variances in their ordinance which would allow the construction of low and moderate income housing, for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York guaranteeing to me, among other rights, my right to travel, my right to associate with other persons, my right to live in an integrated environment,

my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I am employed as a legal secretary by Monroe County Legal Assistance Corporation, 628 Clinton Avenue North, Rochester, New York. My gross annual income for this past year was $5,981.00; this is paid every two weeks, gross amount $235.00, net amount $198.94. I have three children, ages three, four and seven - the oldest being a boy and the youngest two, girls. Because my income is so limited and because I am the sole support of myself and my minor children (I am separated from my husband; I believe that he is unemployed), I am eligible and do receive benefits from the Monroe County Welfare Department. Monroe County Welfare pays $101.00 a month for my public housing apartment unit in Hanover Houses.

This is a special rate on the rent of this apartment for a welfare recipient, such as myself. Additionally, I receive a payment of $45.00 every two weeks from the Welfare Department to help defray other living expenses for myself and my family. I receive medicare benefits and food stamps.

3. Counting the bi-weekly extra payment from welfare in addition to my bi-weekly salary, I have disposable income of $480.00 per month. Allowing one-fourth of that income to defray housing costs for myself and my minor children, I would have $120.00 a month of income which could be available for supplying my housing needs. Because of my low income, locating decent and adequate housing in the metropolitan Rochester community has always been a particular problem for me.

4. I was born in Rochester in 1946. My parents came to Rochester, my mother from Memphis, Tennessee and my father from Arkansas, approximately twenty-eight years ago. Because of our race, our low income status and the lack and availability of adequate, decent housing in the Rochester metropolitan community, I have always lived in the sub-standard housing of black ghettos in the Rochester center city. I first lived at 25 Daden Street in Rochester, New York with my parents. The house had no central heating but only a space heater on the first floor. Next my family moved to 31 Thomas Street, Rochester, New York. The house was in such a state of disrepair that there was a column in the basement which supported an obviously sloping livingroom floor. Gutter rats ran in and outside of the house and the premises was

roach infested. Thereafter, I lived by myself at 23 Loomis Street, Rochester, New York. Because I got married and started having a family and needed more space, I had to find other housing. I moved to 79 Sellinger Street, Rochester, New York. I had a two bedroom second floor apartment which I rented from a private landlord for $75.00 a month plus utilities. The apartment was in deplorable condition. It was rat infested and roach infested; the sewers constantly backed up, the roof leaked and the house was also infested with red ants. Because the housing was so deplorable, I applied and finally received a place in Hanover Houses, public housing operated by the Rochester Housing Authority. The house at 79 Sellinger Street, Rochester, New York had been so infested with roaches and ants that my refrigerator and freezer

and other furniture had become infested in their linings with the roaches and ants and I was unable to move any of my furniture or household appliances to my new unit in public housing at 10 Vienna Street.

5. The apartment at 10 Vienna Street is a three bedroom apartment on which I have a month to month written lease. I have lived there for approximately two years. While the public housing authority has recently re-furbished the apartment, installing new kitchen fixtures and putting carpets on the floors, the housing is far from adequate and the environment like living in a jungle. The apartment has such physical defects as exposed radiator pipes which cause burns when touched by small children; the apartment units have no heat control so that the apartment is very hot in the summer and

very cold in winter. Hanover Houses is a multi-storied apartment complex; I now live on the seventh floor; since the elevator regularly does not work in the apartment project, I must walk seven floors to and from my apartment. There is no air-conditioning in the apartment and I have not been able to get action to date from the housing authority on my request for screens in the windows.

6. In addition to the physical defects in the public housing unit, the environment of the apartment project is one of extreme overcrowding of persons into inadequate units in an environment which is one of uncontrolled violence. I am vice-president of our Hanover Houses tenants' association and I am familiar with the problems of our public housing project not only from being a tenant who lives in the project but from being a

tenant who has tried to bring solutions to some of our problems.

7. About 96% of the housing units in the public housing project are occupied by women who reside by themselves with numbers of small children. Children in these apartment units average anywhere from two to nine. Because there are so many units occupied by women alone, attacks on women have been commonplace in the apartment project. Since the summer of 1971, there have been three successful rapes of women in the apartment project. No one has been arrested or accused of any of these rapes and we have been unsuccessful in having local police involve themselves in anything but a minor way in more adequate policing of the area since our project is not a city public housing project. The public housing authority to date has not responded to our requests for

an adequate monitoring and maintenance system to give protection to women tenants. The threat of attack to women is so great that rapes have gone unprevented when an attacker accosts a woman in an elevator or when an attacker waits in a shadow in a hallway while a woman opens her door into her apartment and is then pushed into the apartment by her attacker and raped.

8. Not only is the apartment project located in an area which is high in incidents of violent crimes, the area is also one frequented by dope addicts. Apartment dwellers in Hanover Houses are constantly faced with the prospect that on returning each evening to the apartment, the apartment will have been sacked of all movable, quickly resalable items. Narcotics addicts have in the past stolen master keys to the apartments in Hanover Houses and

and while the residents are away have obtained easy access to the apartment units and have removed such things as television sets, radios, etc. My sister, who also resides at Hanover Houses, had this experience on several occasions. Once she found that thieves had gained access to her apartment and prepared their own meal; another time she found that her humidifier, clock radio and other personal items had been stolen. The addicts then sell these stolen items to other residents of the area, many times other residents of the Hanover Houses apartments. Because the residents of Hanover Houses apartments are all of such a low income level, there is a ready market for stolen valuables; it is not surprising for one tenant to visit another tenant and find that the other tenant has bought items of recently stolen property.

9. Existing alongside of the violence is prevalent prostitution and perversion. My son, now seven years old, recently was accosted by a male pervert in the elevator at Hanover Houses. Because the project is so overcrowded (once one two bedroom apartment was occupied for a period of time by two families), it is impossible for any mother to allow her children outside of the apartment to play. Any child alone with any toy of his own immediately becomes a victim of larger, unsupervised and uncontrolled children, who simply take the toy from the child.

10. Because of the violence of the neighborhood, young children are also unsafe even in going to and from school. My son, my only school age child at the present time, was enrolled in public school in the area for kindergarten and

first grade. I used to send him to school with milk money and some small change. However, he was always mugged on his way to or from school by other larger boys and his small change taken from him. While he was not physically hurt on any of these occasions, he was roughed up so that his pants were practically torn off him on numerous occasions. The situation was such that I had to make special arrangements with his public school teacher to allow him to leave his public school through a different door so he could avoid certain of the worst streets in the neighborhood in returning from school to the apartment house.

11. Because the threat to my son in going to and from school became so great, I decided to try to afford enrolling him in a parochial school;he can go to this

school by taking a bus very near to our apartment project entrance. I really cannot afford to pay the extra costs even though I am given a special rate because of my low income level. At the parochial school tuition is $125.00 a year, plus $20.00 registration fee. I have to pay extra for all his books, pencils, etc. Because my son cannot come home for lunch - I, of course, am away all day working - I need to pay an extra $1.75 a week for a lady at the parochial school to watch my son eat his lunch which I prepare for him every day; the parochial school has no cafeteria. The public schools which my son attended for kindergarten and first grade were so inadequate that he had not even learned his numbers and alphabet after completing the first grade. Last year, I therefore enrolled my son in special tutoring in order for him to catch up with

his parochial school classmates. He now has his subjects at parochial school split between classes on a second and first grade level.

12. There are no play areas for children on the Hanover Houses project or in the neighborhood. A parent cannot let young children outside of the apartment as I previously indicated, without an adult accompanying them. However, even such supervised play outside of the apartment is treacherous. For example, older children in the neighborhood who attend Baden Street Settlement, about 10:00 o'clock each evening break their soda pop bottles around the Hanover Houses project. Each morning the area is littered with soda pop glass. The apartment project personnel attempt to sweep up this glass but inevitably the apartment house project remains strewn with glass.

Last summer, when my son was playing football in the apartment house project grass, he cut his hand on glass in the lawn and had to have three stitches to close the wound.

13. Surviving in an environment such as that of Hanover Houses, presents adjustment problems for the children. My son, for example, prior to moving into the Hanover Houses had been taught not to fight. However, just to get to and from his school in the Hanover Houses area, he had to cultivate a tough, aggressive attitude. Now, however, that he is safe in going to and from parochial school and is relatively secure in the environment of parochial school, he has needed to readjust his attitudes and relationships toward other children. I myself make every effort to be in my apartment in the apartment unit and locked into that apart-

ment unit every evening prior to darkness. I never go outside of my apartment after dark even with my children unless I am going with a group of persons. The only playgrounds that I feel that I can safely take my children to are those where I go when I play in the women's softball league in the evening and where there are numbers of people gathered.

14. I believe that I am entitled to be able to locate adequate, decent housing in an environment which will offer security in performing the routine, ordinary tasks of life, recreation for me and my children and adequate eddcational opportunity for my children. However, there is just no housing to rent in the City of Rochester for a person of my low income. The public housing unit located in the jungle where I now reside has long waiting lists for persons of low income seeking an apartment

unit. In the past I have searched for alternate housing in the Rochester metropolitan area and I am continually alert to other possibilities for housing. However, apartments in the Rochester Metropolitan area of any description begin at a rent of at least $180.00 per month. The limit on a welfare allowance for rent is $150.00 per month.

15. Realistically, after careful search for adequate housing in the Rochester metropolitan area over a six year period, I have found that a black person has no choice of housing in the Rochester metropolitan area. Rather, a black person of my income level is forced by reason of his/her race to live in substandard housing in the center of Rochester. For example, there are no apartments available in the Town of Penfield which a person of my income

level can afford. My budget for housing per month is, as above noted $120.00 per month. I understand that a three bedroom apartment in Penfield rents for $300.00 per month. Since there is not enough housing for low and moderate income persons available, even in the City of Rochester, I and my family are forced to live in Hanover Houses, which is substandard housing.

16. I have sought housing accommodations in the Rochester metropolitan area, including the Town of Penfield - all to no avail because I am a black person of low income. I would like an opportunity to live in the Town of Penfield; I believe I have a right to live in the Town of Penfield and to have access to decent housing in a decent environment.

17. One of the most important

reasons for my desiring to have an opportunity to live with my family in decent housing in a decent environment is my great concern that my children have an adequate education. I have already noted that I found the instruction in the public kindergarten and first grade to be so inadequate that I transferred my child to a parochial school. I understand that the public school in my area, school No.20, has been rated among studies of Rochester City Schools as one of the lowest in terms of effective instruction of students. On the other hand, the Town of Penfields schools rate high in studies which evaluate area schools. The Town of Penfield by its exclusionary policies, practices and laws has and continues, therefore, to cause me real harm by denying me the opportunity to

to reside there.

18. The problem that I have in being a black person of low income and therefore confined for the purposes of selection of housing and environment to "ghetto" conditions in Rochester center city is a problem that is shared by many other persons. The census of 1970 discloses that there are 49,647 blacks residing in Rochester. In the whole of Monroe County there are 52,218 blacks. Penfield, according to the latest census has 60 black residents. I believe that I can adequately represent the black, low income individual in this lawsuit against the Town of Penfield.

/s/ Rosa Sinkler
ROSA SINKLER

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THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT CIVIL ACTION No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY and KATHERINE HARRIS, being duly sworn according to law, depose and say:

1. ROBERT WARTH, individually, alleges that he is a private citizen residing at 265 Castlebar Road, Rochester, New York. Along with Gail I.Warth, his wife, he owns the real property at 265 Castlebar Road, Rochester, New York as a tenant by the entirety. ROBERT WARTH has lived in the City of Rochester all his life. He has owned property in the City of Rochester since 1964. As a city tax-

payer since 1964, ROBERT WARTH has observed the taxes of the City of Rochester rise. For example, in 1965-66, ROBERT WARTH's tax on property at 145 Afton Street, Rochester was $392.93. In 1966-67, Robert Warth's tax on the same property was $413.13. In 1967-68, Robert Warth's tax on the property was $430.77. In 1968-69, Robert Warth's tax on the property was $470.94. In 1969-70, Robert Warth's tax on the property was $530.54. In 1970-71, Robert Warth's tax on the property was $566.93. In 1971-72, Robert Worth's tax on the property was $608.45. Robert Warth believes that his taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated properties because of the exclusionary

practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

2. LYNN REICHERT, individually, alleges that she is a private citizen at 224 Seneca Parkway, Rochester, New York. Along with David M. Reichert, her husband, she owns the real property at 224 Seneca Parkway, Rochester, New York, as a tenant by the entirety. LYNN REICHERT has owned property in the City of Rochester since 1970. As a city taxpayer, she has observed the taxes of the City of Rochester rise. For example, city taxes on the Seneca Parkway property for 1970-71 were $843.15; city taxes on the same property for 1971-72 were $901.33. LYNN REICHERT believes that her taxes have risen in large measure because the City of Rochester has increasingly been caused

to assume more than its full share of the burden of the tax abated properties because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

3. VICTOR VINKEY, individually, alleges that he is a private citizen residing at 134 Nunda Boulevard, Rochester, New York. Along with Karen F. Vinkey, his wife, he owns the real property at 134 Nunda Boulevard, Rochester, New York, as a tenant by the entirety. VICTOR VINKEY has owned this property for nine years. As a city taxpayer, he has observed the taxes of the City of Rochester rise. Taxes on his property in 1964-65 were $561.08; in 1965-66, $581.39; in 1966-67, $608.60; in 1967-68, $625.80; in 1968-69, $682.06; in 1969-70, $792.54; in 1970-71,

$840.91; in 1971-72, $892.84. VICTOR VINKEY believes that his taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated property because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

4. KATHERINE HARRIS, individually, alleges that she is a private citizen residing at 108 Garson Avenue, Rochester, New York. Along with Nathan Harris, Jr., her husband, she owns the real property at 108 Garson Avenue, as a tenant by the entirety. KATHERINE HARRIS has lived in Rochester since 1932; she has owned the property at Garson Avenue for about twelve years. As a city taxpayer, KATHERINE HARRIS has observed the taxes in the City

of Rochester rise. In 1959-60, the taxes on the Garson Avenue property were $177.07; in 1960-61, $185.04; in 1961-62, $189.19; in 1962-63, $186.84; in 1963-64, $186.87; in 1965-66, $213.90; in 1967-68, $236.44; in 1968-69, $258.47. KATHERINE HARRIS believes that her taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated property because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

5. The individuals aforenamed make this affidavit in opposition to the defendants' motion to dismiss their complaint on the ground that they have no standing to sue. The basis of the complaint against the Town of Penfield

is that these individuals, property owners and tax payers of the City of Rochester, are damaged by the defendant Town of Penfield's exclusionary action which excludes the construction of low and moderate income housing in Penfield, which actions of the Town of Penfield, cause the City of Rochester to bear the burden of supplying low and moderate income housing in the Rochester area, placing thereby a greater proportion of tax-abated property in Rochester than in the Town of Penfield. The individual property owners and tax payers also maintain that they are damaged by the exclusionary practices of Penfield in that because they are federal tax payers and the federal government appropriates to the Department of Housing in Urban Development certain monies each year for

federally financed housing programs, these individuals do not receive fair or equitable benefit of their federal tax dollar because the Town of Penfield refuses to allow any subsidized or federally financed housing in the Town of Penfield.

6. According to the affiants' information, there has never been a single program of subsidized housing in the Town of Penfield whether that subsidized would be by way of subsidized rental units or subsidized unit housing for sale. In fact, the affiants know that Metro Act of Rochester in 1969, attempted to interest Penfield, along with other Rochester area towns in undertaking the benefit of Section 23 of the U.S. Housing Act of 1937 to provide for low cost rental units in the Town of Penfield. However, the Town of Penfield took no action on the proposal.

Significantly, the Town of Penfield's Housing Task Force, appointed by the Penfield Town Board in 1972 to survey housing needs in the town, reported recently that its opinion survey of Penfield town residents disclosed that while residents believe that Penfield should allow the building of moderate income housing (no inquiry was made by the town on attitude toward low income housing) - something the plaintiffs in this lawsuit allege that the town has forbidden by ordinance, practices and policies in the past - the residents are still opposed to the Town of Penfield undertaking or encouraging any government subsidized housing (except where that housing would be subsidized for the elderly). See page 6 of Report of Penfield Housing Task Force on Moderate Income Housing, June 5, 1972 attached here-

to and made a part hereof as Exhibit A.

7. As is more fully outlined in the chart attached hereto and made a part hereof as Exhibit B, the federal government over the last ten years has appropriated increasing amounts of the federal taypayer dollar in support of an increasingly recognized national commitment to provide decent housing to all citizens. In explaining the Housing and Urban Development Act of 1968, The Report of the President's Committee on Urban Housing - A Decent Home, discusses the national housing goal as follows:

> The place a man lives is more than just another commodity, service, or possession; it is a symbol of his status, an extension of his personality, a part of his identity, a determinant of many of the benefits - and disadvantages - of society that will come to him and his family: schooling, police protection, municipal services,

neighborhood environment, access (or lack of access) to a hundred posibilities of life and culture.

The Report of the President's Committee on Urban Housing: A Decent Home, page 45.

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Housing is not only a matter of a roof and walls but of a neighborhood and a society. People need not just a housing unit, but a neighborhood - a unit in a social setting.

And a national housing policy must look at the relation of housing to the web of living. Although investigation of all the social and physical elements of a suitable living environment is well beyond the scope of this assignment, better community facilities and services are necessary if a housing program is to succeed.

The Report of the President's Committee on Urban Housing: A Decent Home, page 48.

8. Because the Town of Penfield has by its ordinances, policies, practices, customs and usages excluded the use of

monies available for subsidized rentals or sale units in the Town of Penfield, affiants have received no fair or equitable benefit of their federal tax dollar which is appropriated for such purposes. While receiving no fair benefits of that federal tax dollar, affiants have become and are still becoming the victims of the process of urban decay which the exclusionary practices of the defendant Town of Penfield have produced. The process of exodus from the central city by the affluent white population to the fringe areas of the city continues, leaving concentrated in the central city the poor and non-white population. "...(the total population of central cities will increase by somewhat over 10 million persons between 1950 and 1978, but ... over this same period the percentage of Ameri-

cans residing in these central cities will have declined from 34% to 27%." The Report of the President's Committee on Urban Housing: A Decent Home (1968), at page 136. "While the central cities have gradually been losing their white population... the non-white population of the central cities has doubled since 1950, and is projected...to continue to increase. By the projections, 30% of the population of central cities will be non-white in 1978, compared to 22% today and 12% in 1950." The Report of the President's Committee on Urban House - A Decent Home (1968), at page 137. With the shift of the affluent, white population to the suburbs, also comes the shift of jobs to the suburbs. The center city becomes an area inhabited increasingly by non-white, poor and an area of declining business and

job opportunities.

9. This pattern of urban flight is present in the Rochester area just as in other areas of the country. As is illustrated in the population data compiled by the Rochester Center for Governmental Research, attached hereto and made a part hereof as Exhibit C, Rochester city population between 1960 and 1970 has steadily declined while the population in the surrounding, suburban towns has steadily increased. For example, in 1960 the City of Rochester population was 318,611 while the population of the surrounding towns, combined, was 267,776; in 1964, the City of Rochester population had declined to 305,849 and the population of the surrounding suburban towns had risen to 319,279; by 1970, the City of Rochester population had further declined to 296,233 while the

population of the surrounding suburban towns had risen to 415,684. Black population has always been and is increasingly centered in Rochester. In 1960, Rochester black population was 23,586 while the black population of the surrounding, suburban towns was 598; in 1964 the black population in Rochester was 31,751 while the black population in the surrounding, suburban towns was 810; in 1970, the black population in the City of Rochester had risen to 49,647 while the black population in the surrounding, suburban towns was only 2,571. Penfield population has grown from 12,601 in 1960 to 17,337 in 1964 to 23,782 in 1970. Black population in Penfield in 1960 was 23, in 1964 was 22, and in 1970 was 60. A survey published in 1970 entitled Housing in Monroe County - Housing Study Memo Number 4, demonstrates

that 82% of all new jobs in the Rochester area in the next three years will be jobs which develop in the Rochester suburbs.

10. As the Town of Penfield excludes, as affiants believe, by their zoning ordinance, policies, practices, customs, and usages all low and moderate income housing from Penfield, the City of Rochester assumes an ever increasing burden and in turn the affiants as taxpayers of the City of Rochester, assume an ever increasing burden of providing low and moderate income housing, some of which housing is tax abated. As is demonstrated from the tax information on the Town of Penfield collected over the most recent ten year period, attached hereto and made a part hereof as Exhibit D, the Town of Penfield has no tax abated property on its rolls attributable to housing.

11. An examination of the tax data in the last ten years on the Town of Penfield shows dramatically the effect of the urban flight in financial benefits. The value of total taxable property rose from 5,463,588 in 1950 to 71,664,043 in 1971-72. On residences, for example, assessed value rose from 28,417,000 in 1968-69 to 47,484,450 in 1971-72. Assessed valuation in Penfield on shopping centers rose from 1,296,300 in 1968-69 to 2,643,519 in 1971-72. Commercial buildings, assessed valuation, rose from 1,296,300 in 1968-69 to 3,428,800 in 1971-72. Assessed valuation for industries rose from 634,719 in 1968-69 to 911,400 in 1971-72.

12. On the other hand, an examination of the history of tax abated property in the City of Rochester for the same, most recent

ten year period demonstrates that tax abated properties have been an increasing factor on the Rochester city tax roll. Copies of these charts are attached hereto and made a part hereof as Exhibit E. From 1962 through 1965, there were no tax abated housing projects in the city listed. Beginning in 1967-68 tax year, $6,055,919.00 are listed on Rochester exempt property rolls; in 1968-69 this figure rose to $7,333,179.00 to $7,646,774.00 in 1969-70, to $11,194,226.00 in 1970-71, to $11,463,716.00 in 1971-72. As is reported in a recent news article, a copy attached and made a part hereof as Exhibit F, the City of Rochester tax base continues to decline. One of the major reasons cited for that decline is "urban renewal". The city manager reported that the tax base declined "largely

because the amount of tax exempt property grew".

13. As properties are taken off the tax rolls of the City of Rochester, the remaining taxpayers necessarily have to assume individually a larger burden of the taxes in Rochester which are necessary to finance the essential services of the city. As already noted, the tax rate in the City of Rochester has risen continually in the past and continues to rise as the tax abated figure in Rochester arises. The city tax rate rose from $42.06 per $1,000.00 assessed valuation in 1959 to $48.57 by 1964 to $80.95 in 1972. See Exhibit G attached hereto and made a part hereof.

14. It is now almost a matter of certainty that Rochester city tax rate will rise again shortly. See Exhibit H

attached hereto and made a part hereof.

15. While the City of Rochester struggles with all the problems of providing for a mixed urban community, the Town of Penfield by its zoning ordinances and practices and policies incidental thereto, secures for itself a safe place and haven for affluent whites. As is evident from analysis of the zoning ordinance submitted in the affidavits of Messrs.Kling, Taddiken and Farley, submitted herewith, 98% of all vacant land in the Town of Penfield is reserved for expensive, single family home development. In commenting on the recent Report of Penfield Housing Task Force on Moderate Income Housing, June 5, 1972, Pierre Coste, Housing Task Force chairman, has described the "heartland of Penfield residents" being persons who

live in private homes, have lived in Penfield over five years and are between 36 and 55 years of age. See Exhibit I attached hereto and made a part hereof. The survey conducted by the Penfield Housing Task Force reveals that 66% of those surveyed do not approve of federal mortgage assistance for families of moderate income; 65% feel that there is a shortage of moderate income housing in Monroe County, 65% do not approve of tax abatement of local property taxes to provide moderate income housing in Penfield but 64% do approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly, specifically. As previously noted, there was not even an inquiry by the Task Force of attitudes of Penfield residents about construction of low

income housing in Penfield. The survey did show that 63% of those surveyed would not object to living within one mile of a moderate income dwelling but when the distance to the moderate income dwelling was reduced to one-fourth mile only 42% of those responding indicated that they would not object.

16. Seventy-six percent of the people surveyed in Penfield by the Housing Task Force felt that the planning board and zoning board in Penfield are obligated to enforce strict zoning laws to protect existing property owners. In fact, the Housing Task Force report discloses that present zoning in Penfield indeed has the exclusionary effect which the plaintiffs in this lawsuit maintain exist. The Housing Task Force recommended, among other points, that the Town of Penfield take

steps to allow the construction of at least 2,000 moderate income (again no inquiry was made on low income housing units) housing units by 1980 to meet the town's "fair share" of the Monroe County need for such housing. See news article attached hereto and made a part hereof as Exhibit J. In order for there even to be implementation of the recommendation for construction of moderate income housing in Penfield, the Task Force recognized that Penfield's present zoning ordinance does not presently allow for the variety of housing styles, sizes and densities which will be necessary to utilize in order to build moderate income housing "given today's construction economics". See page 13 of Exhibit A. In connection with the release of the Task Force report, Task Force chairman Pierre Coste is quoted as

having stated, "The zoning laws, density requirements and construction costs now prohibit moderate income housing in Penfield."[1] Not only does the present zoning law of Penfield, and the policies and practices of the town, preserve Penfield as an exclusive enclave, residents of the Town of Penfield recognize and appreciate this exclusiveness and intend to keep it that way.

Following the release of the Penfield Housing Task Force report, one Penfield resident, apparently the owner of a $40,000.00 home in Penfield, put the problem succinctly as follows:

> I don't want Penfield to become a low cost development community. If I wanted that, I could move to the center city...the Task Force is going to have to modify either

[1] See news article attached hereto and made a part hereof as Exhibit K.

its statistics or its values. See news article attached hereto and made a part hereof as Exhibit L.

17. The effect of the exclusionary practices and exclusionary laws of the Town of Penfield on the plaintiff City of Rochester taxpayers is a pervasive damage. The damage to the City of Rochester taxpayers is not only the damage of loss of benefits from federal tax dollar, spiraling city tax rate to provide minimum city services but it is as well the real, measurable monetary damage that flows from there being an impairment to the city environment by the calculated acts of the Town of Penfield. The right to decent housing, otherwise stated as the right to an adequate dwelling in an environment where there are adequate opportunities for good schools, community services, job

opportunities, is, at this point in the development of our constitutional law a longstanding right. Justice Vincent in Shelley v. Kramer, 334 U.S. 1 (1948), observed:

> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment on the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded as an essential pre-condition to the realization of other basic civil rights and liberties which the amendment was intended to guarantee.
>
> Shelley v. Kramer, at 10.

Indeed, responding to the Penfield Housing Task Force questionnaire, 76% of the Penfield persons responding indicated that they believed decent housing is the right of every citizen. See news article attached hereto and made a part hereof as Exhibit M.

BEST COPY AVAILABLE

18. There are many indices to measuring the effect of the exclusionary practices by the Town of Penfield on the City of Rochester and City of Rochester residents. The low and moderate income housing pressure created in the City of Rochester by the exclusionary practices of Penfield can be measured, for example, by the number of residential conversions, both reported and unreported in the City of Rochester. Conversions are simply the process of creating additional housing units by breaking up larger ones into smaller ones or by improving existing non-residential space so that it can be used for living purposes. It is a forerunner of a neighborhood's decline unless it is controlled and planned. [1]Recent data indicates that from the 1960 to the 1970

.....

[1]Source of information Monroe County Planning Council.

census there were almost twice as many unreported residential conversions taking place as there were reported ones. The effect of such trends is ultimately to increase densities to a point where public services and facilities become overtaxed while increasing absentee ownership.

19. The effect of Penfield's exclusionary practices which create a concentration of low, moderate housing in the City of Rochester and produce, as some of the effects, a density crush, also has direct effect on the City of Rochester and the City of Rochester residents in incidents of crime and provision for law enforcement.

> Some of the conditions associated with the type and amount of crime are related to the geographic area in population - the density and size of a community; the race, age, and sex composition of its population; economic status and mores of the inhabitants; educational, recreational, and

religious characteristics; the stability of the population in terms of commuters and seasonal visitors; and the climate. The Police System, Present/ Proposed, Rochester Center for Governmental and Community, Research, Inc. (1970) page 35.

In reporting in March of 1972 on the most recent crime statistics in the City of Rochester, see Exhibit N attached hereto and made a part hereof, City Police Commissioner John A. Mastrella commented that the number of crimes is directly related to the density of population in an area. More people mean more crime, he said.

20. Unless the Town of Penfield is prevented from continuing its exclusionary practices and enforcing its exclusionary zoning laws and policies, the plaintiffs city taxpayers will continue to be grievously damaged in terms of monetary loss

and deprivation of rights,as more specifically outlined above. There are 48,005 persons who are residents of the City of Rochester and property owners in the City of Rochester. Plaintiffs as residents and taxpayers of the City of Rochester submit that they adequately represent this large class of persons in this lawsuit.

/s/ Robert J.Warth
ROBERT WARTH

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omitted
in
Printing.

/s/ Lynn D. Reichert
LYNN REICHERT

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in
Printing.

AFFIDAVITS - ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY and KATHERINE HARRIS

/s/ Victor Vinkey
VICTOR VINKEY

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/s/ Katherine Harris
KATHERINE HARRIS

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EXHIBIT A.

Report of

PENFIELD HOUSING TASK FORCE

on

MODERATE INCOME HOUSING

June 5, 1972

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INTRODUCTION

Origin and Purpose

The Penfield Housing Task Force was created by the Penfield Town Board at its regular meeting on March 6, 1972. The resolution establishing the Task Force appears in Appendix A on page 21.

The Preamble and Purpose from that resolution are as follows:

Preamble: The Penfield Town Board recognizes that a shortage of moderate income housing exists in the County of Monroe, and that the Town of Penfield has a responsibility to help alleviate that shortage. We hereby create the Penfield Housing Task Force and charge it with the following purpose.

Purpose: To analyze the various presently existing methods by which moderate income housing can be built in Penfield and to recommend the types and quantity that should be built. The recommendations of the Housing Task Force may also include: 1) Identification of general or specific locations for moderate income housing in Penfield, and 2) changes, if any, needed in the Penfield Zoning Laws to permit the construction of

the recommended moderate income housing.

Membership

The Chairman, Pierre Coste and Co-Chairman, Dr. J. Donald Hare of the Task Force were appointed at the March 6 Town Board meeting. Other members were appointed at the April 3 meeting. The membership of the Task Force was selected to represent a cross section of views and philosophies within Penfield. The Task Force members are:

Phillip Bailey	1912 Salt Road
Wendy Bickmore	1849 Blossom Road
Alan Bernstein	129 Shirewood
Pierre Coste	107 Woodhaven Drive
Roy Everson	2467 Penfield Road
Joseph Frate	38 Hitchcock Lane
Thomas Hammond	108 Henderson Drive
J. Donald Hare	52 Farmbrook
Clarence Heininger	2048 Five Mile Line Road
Max Holtzberg	50 Old Barn Circle
Thomas Johnston	29 Royal View
Evelyn Landon	56 Hilltop Drive
David O'Brien	2 Greenwood Cliff
Cornelia Patten	143 Brentwood Drive
Robert Peterson	152 Willow Bend Drive
George Shaw	1700 Jackson Road
Edith Wilcox	1736 Jackson Road

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WHAT IS "MODERATE INCOME"

-Just about all of us living in Penfield have been (or maybe still are, or perhaps will be) in the moderate income range.-

Because the term moderate income is a subjective one, definitions will vary. This Task Force has reviewed various definitions and has considered the income levels set by various agencies that assist families in obtaining housing. (See Appendix B on page 23.)

For the purpose of this report we will consider moderate income families as families having incomes between $5,500 and $11,000 per year, depending on the size of the family. That is a single person or couple with no children would be towards the bottom of the range. Families with one or two children would be towards the center of the range, and families with three or more children would be towards the top of the range.

Occupations often considered in the moderate income range are: retail and service industry employees, municipal employees, school district employees. A large local manufacturing facility indicated four groups of people are typically hired in the moderate income range: unskilled assembly line workers, skilled tradesmen, secretaries and recent college graduates. The elderly, young people and minorities are often in the moderate income range.

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Moderate income housing, that is, housing which moderate income families can afford to purchase or rent, should in most cases be priced below $20,000 or carry a rental price of less than $150. a month. Again the size of the family will be an important variable.

At the outset of this study the Task Force suggested that the maximum purchase price of a home should be about $25,000. This was based on the assumption that a family can afford housing valued at roughly two and a half (2 1/2) times its income. Discussions with mortgage officers at local lending institutions indicate that this factor should be reduced to two (2) times, because of increased interest rates and taxes. Therefore, the $20,000 figure is a more realistic maximum.

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OPINION SURVEY

Purpose:

a) To measure the opinions of Penfield voters toward moderate income housing in the town.

b) To determine what effect a straightforward presentation of some of the facts (pro and con) relating to key issues has on opinions.

c) To provide an additional communication channel for Penfield residents to express their views on housing issues.

Participants:

2319 questionnaires were sent to every fifth voter registered for the November 2, 1971 General Election. 811 or 35% of the questionnaires were returned and tabulated. This is considered to be a good rate of participation for this type of survey.

Survey Design:

A four page questionnaire consisting of 31 questions dealing with moderate income housing and related issues and 11 questions on personal data was mailed to each of the participants on April 13, 1972. A letter of explanation and a postage-paid return envelope was enclosed. In addition, half the mailing contained a fact sheet titled "Some Points to Consider".

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Method of Analysis:

a) Each reply was assigned an opinion index based on the answers to questions 8,15,16,17,21,26,28. The opinion index has a range from +110 for a respondent extremely positive toward moderate income housing in Penfield to -110 for a respondent expressing an extremely negative opinion. An index between +10 and -10 is considered neutral.

b) Replies to 39 questions and the opinion index were coded and punched cards were prepared. Six questions were excluded from the tabulation to comply with a limitation imposed by the computer program. The University of Rochester computer facilities were utilized to aid the analysis of the data.

c) The analysis includes the following factors:
   1. Opinion profile of the 811 replies.
   2. Tabulation of replies to the individual questions.
   3. Cross tabulation of replies to selected pairs of questions.
   4. The effect of "Some Points to Consider" on opinions.
   5. Summary of the general tone of written in comments.

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Results: (See Appendix C on page 25 for Tabulated Questionnaire)

The number of respondents having positive opinions is greater than those having negative opinions. This difference is statistically significant.

	Number	Percent
Positive opinions (+15 to +110)	402	49%
Negative opinions (-15 to -110)	289	36%
Neutral opinions (+10 to -10)	120	15%
	811	100%

Average overall opinion index	=+ 5.95
Average opinion index of positive replies	=+44.9*
Average opinion index of negative replies	=-46.6*

Although the analysis is not yet completed, initial indications are that the fact sheet did not significantly affect the opinions expressed.

The general tone of responses to the questionnaire can be seen by looking at those questions where 60% or more were either above or below the neutral range.

Opinion Questions:

No. 7 81% would be more favorable to an apartment house or town house

*Positive and negative replies were calculated from Zero to +110 and Zero to -110 respectively in developing this average

EXHIBIT A

if it were known that residents were paying their "fair share" of town services.

No. 1 76% feel decent housing is the right of every citizen.

No. 25 76% feel the Planning and Zoning Boards are obliged to enforce strict zoning laws to protect existing property owners.

No.40a 75% feel more housing is needed for senior citizens.

No. 26 72 % feel the Town should formulate plans and take actions which will provide moderate income housing which best serves the progress of the Town.

No. 9 66% do not presently find the idea of living in a condominium appealing. This reduces to 44% if the family is grown up (quest. No. 10).

No. 11 66% do not approve of federal mortgage assistance for moderate income families.

No. 3 65% feel a shortage of moderate income housing exists in Monroe County.

No. 13 65% do not approve of tax abatement of local property taxes to provide moderate income housing in Penfield (in general).

EXHIBIT A

No. 22 64% approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly (specifically).

No. 40b 64% feel more housing is needed for young families.

No. 18 63% would not object to living within one mile of moderate income dwellings. This reduces to 42% if the distance is reduced to 1/4 mile (quest. No. 16).

No. 40d 63% feel more housing is needed for moderate income industrial and public service workers.

Personal Data Questions:

No. 37 90% own their present dwelling.

No. 36 88% Reside reside in a private home.

No. 32 76% expect to live in Penfield for more than five years.

No. 31 69% have lived in Penfield for more than five years.

No. 41 69% feel they understand the main issue

Analysis is continuing to summarize written-in comments, to establish the significance of the fact sheet, and to further condense the cross tabulated question pairs. These results will be included in a follow up report.

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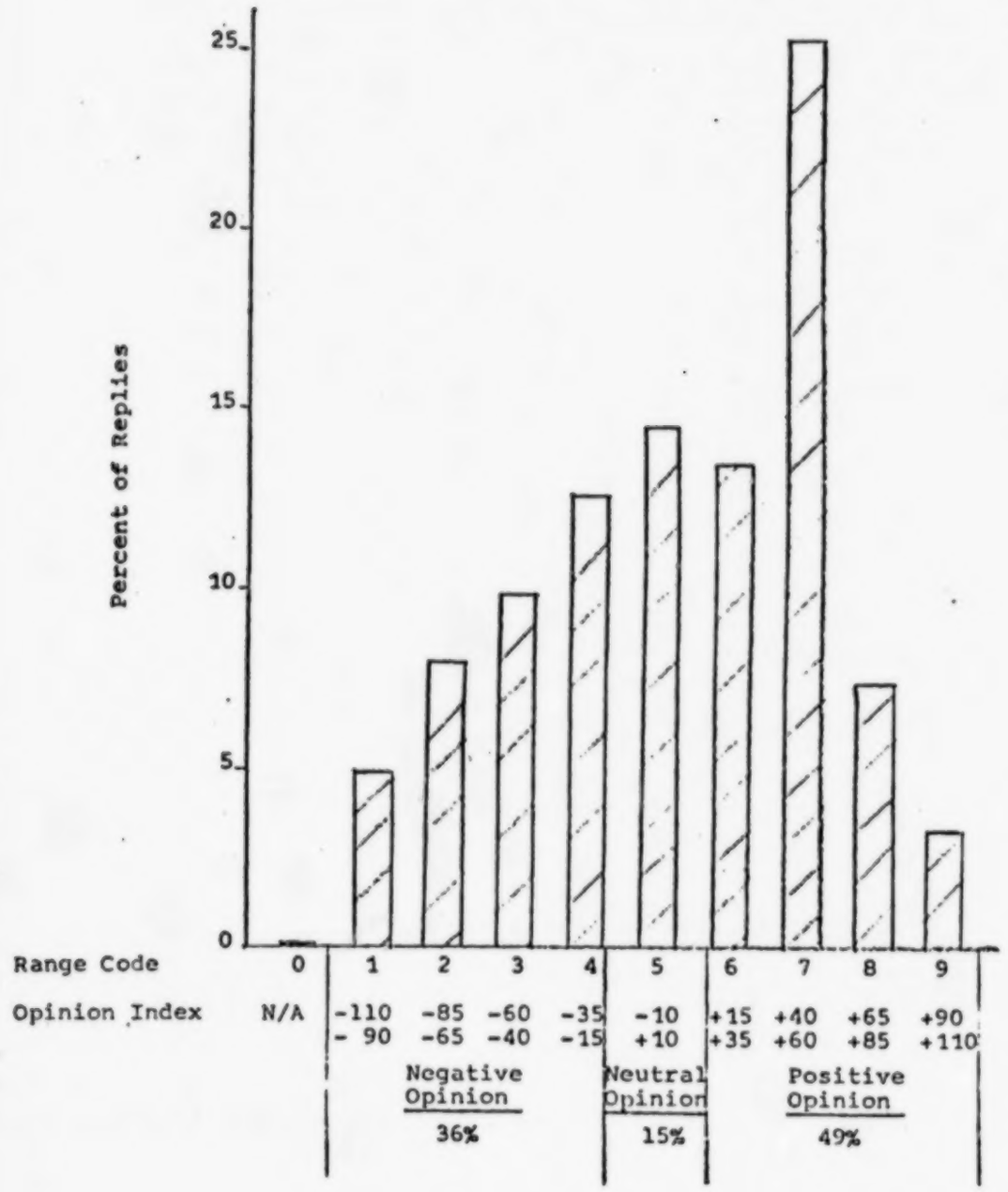
DISTRIBUTION OF OPINION INDEX



THE HOUSING SHORTAGE

In Monroe County

The housing shortage in Monroe County was formally documented in a study prepared by the Rochester Center for Governmental and Community Research for the Metropolitan Housing Committee, Joseph C. Wilson, Chairman. It its Summary Report, dated April, 1970, the report indicated a need for 69,600 additional housing units in Monroe County in the 1969-1975 period. Of these, 51,900 were identified as low and moderate income housing needs.

In a Research Note dated August 19, 1971 the Monroe County Planning Council has updated the data on the housing need in a study entitled 10-year Housing Targets for Monroe County. This study (See Appendix D, page 31) indicates a need for 80,000 additional housing units in Monroe County between 1970 and 1980. Of these 55,000 are identified as needed for growth and 25,000 for replacement. All of the replacement units and 50-65% of the growth are required for low and moderate income families - or about 52,000 to 60,000 low and moderate income housing units. Of these probably two thirds are moderate income and one-third low income.

Penfield's"Fair Share"

Penfield is a part of Monroe County. The residents of Penfield are dependent on the balance of Monroe County - both the City of Rochester and the other suburbs - for

a broad variety of needs and services. These include jobs (52% of Penfield wage earners work in the City of Rochester), cultural events, shopping and commercial services, sports events, etc. It is the belief of this Task Force that while Penfield shares many of the features offered by the balance of the County, by the same token it shares many of the problems of the County, and has an obligation to share in the solution of these problems.

Penfield's population in 1970 was 23,782. (See Appendix E on page 34) for data on Penfield's population and other data from the 1970 Census). During the decade of the Seventies, Penfield's population is projected to increase to 34,800 in 1980. This growth is about 10% of the total projected Monroe County growth of 104,500. Referring to the data above on housing needs, we can calculate Penfield's"Fair Share" of the County's moderate income housing needs as follows:

Housing Units needed for growth	55,000
Replacement Housing units	25,000
Total Need	80,000
Low & Moderate Income(50-65%)	55,000
Less Replacement Units	25,000
Additional Low & Moderate Units	30,000

Two-Thirds moderate Income 20,000

Penfield's share (10% of growth) 2,000

Before accepting this as Penfield's "Fair Share" it is necessary to review Penfield's present share of moderate income housing units - that is to take into account the type of housing mix presently existing in the Town of Penfield. An analysis of the 1970 Census data on value of housing units (See Appendix F, page 35) indicates that 19% of Penfield's present housing units can be classified in the moderate income range. Of this mobile homes represent more than half (11% of the 19%).

The percent of moderate income housing in the 19 Towns in Monroe County ranges from 10% (Brighton) to 41%(Riga). The average for all Towns is 24%. Fourteen of the 19 Towns have a higher percent of moderate income housing units than Penfield.

Based on these data the Penfield Housing Task Force recognizes Penfield's "Fair Share" of the moderate income housing shortage in Monroe County to be on the order of 2,000 units in the 1970-1980 period.

It is recognized that population projections are subject to error, and must be updated periodically. The most recent population projections for Penfield for the 1970-1980 period prepared by the Rochester Center for Governmental and Community Research are expressed as:

Low growth rate - 600 persons per year

Medium growth rate - 1000 persons per year

High growth rate - 1400 persons per year

The Task Force therefore recommends that this study be updated in about two years to reflect actual growth in the 1972/3 period.

STYLES OF CONSTRUCTION

Any discussion of styles of construction of moderate income housing must includea discussion of costs, including land acquisition costs, land development costs and finally construction costs. These costs, plus zoning requirements and current preferences in housing (market preferences) will determine to a large extent the styles and sizes of moderate income housing possible at a given point in time.

Some alternative styles of construction which could be built to sell for $20,000 or under, are: small single family homes, zero lot line homes or patio homes, town houses, multiplex - particularly quadraplex, garden apartments, medium rise apartments and high rise apartments.

This Task Force does not recommend the construction of either medium rise (4 to 6 stories) nor high rise apartments in the Town of Penfield as a mechanism for achieving moderate income housing targets. This style of construction would result in a population density which would exceed that necessary to encourage moderate in-

come housing; it may require major changes in such public services as fire protection, and in general would not be compatible with the suburban character of Penfield.

Preferences in housing styles change over time. While small single family homes and garden apartments were popular twenty years ago, neither appears to appeal to builders in the 1970s as a marketable product. It may be possible to construct a small ranch or cape cod on a lot of 5-6,000 sq.ft. within the small moderate income price range but builders are inclined to believe they would not sell and therefore do not wish to construct them. Garden apartments are designed so that several families share a common entrance to the building. This single characteristic has caused them to lose popularity. The Townhouse, in which each family has its own exterior entrance, is the 1970 replacement for the garden apartment.

There is no experience with zero lot line or patio homes in the Rochester area. The concept is that the house is built in an L or U shape with a patio occupying the balance of the lot, either at the unused corner in the L shape, or in the center of the U. Since the homes are built on or very near the lot line, densities are higher and costs lower than typical single family homes.

The Townhouse style of construction is becoming very popular in the Rochester area.

Although many variations exist, the Townhouse is typically a two story dwelling attached in a row to other townhouse units each having its own individual entrance. Townhouses can be built in a high income price range or in moderate income ranges. The differences are in the size of the unit and in the extra features offered. For example, a high income Townhouse may have 1,400 - 1,800 sq.ft., a basement, 2 1/2 baths, air-conditioning, etc., while a moderate income Townhouse will probably contain less than 1,000 sq.ft., be built on a slab, have one bath and not be air-conditioned. (Appendix G on page 36 indicated the cost of some of the more common "extras").

The second style of construction currently in the Rochester area which can be constructed in the moderate income range are multiplex units. Variations include duplex, tri-plex, quadraplex, eightplex, etc. (The prefix indicates the number of units contained in each building). The quadraplex appears to be the most popular at this point in time. Many different designs of quadraplex units are possible.

This Task Force recommends that the Penfield Town Board be open to proposals for moderate income housing which utilize Townhouse and Multiplex styles of construction. Higher densities per acre than those allowed by the present Zoning Ordinance may be required to enable the construction of these moderate income units, with perhaps more of the total area utilized than presently allowed.

EXHIBIT A

Since styles of housing change, both in terms of design and in terms of preference, it is important that the Town Board and Planning Board remain cognizant of these changes and encourage those which will contribute to the overall character of the Town.

EXHIBIT A

Construction Costs

One builder in the Rochester area provided us with some general cost parameters for moderate income housing using the Townhouse or Quadraplex styles of construction:

Land Acquisition Cost	$ 1,300.
Land Development Cost	1,700.
Construction Cost 900 Sq.ft. at $12.	10,800.
Margin (includes selling expenses, accounting, general management, financing, supervision and profit - 27%* of selling price	5,100.
Total	$ 18,900.

Both land acquisition and development costs are calculated on the basis of 12 units per acre. Appendix H on page 37 shows approximate land acquisition and development cost per dwelling unit at various densities.

*The builder's margin on a higher cost single family dwelling unit will be about 18% of the selling price. Since many of the costs covered by the margin are fixed, the margin represents a higher percentage of the selling price of lower cost houses (about 27%). This relationship is shown in the Value Ratio Curve in Appendix G.

PENFIELD ZONING ORDINANCE

The Penfield Zoning Ordinance contains six basic sections pertaining to housing:

- Residential AA District
- Residential A District
- Apartments or Multiple Dwelling
- Town Houses
- Mobile Homes
- Planned Unit Development (P.U.D.)

A Summary of the requirements of the Housing sections of the Zoning Ordinance are presented in Appendix I on page 38.

In the previous section of this report the conclusion was reached that in order to build moderate income housing given today's construction economics, it will be necessary to utilize a variety of housing styles, sizes, and densities. We have recommemded that the Town Board welcome and encourage this variety in order to meet Penfield's fair share of moderate income housing.

Penfield's Zoning Ordinance does not presently provide for this variety of housing styles and sizes. They could be accommodated by granting variances to the Ordinance; however, the frequent granting of variances is generally considered contrary to good zoning and planning practices. Instead we recommend that the Penfield Town Board adopt changes to the

present Zoning Ordinance necessary to accommodate the broad variety of housing styles, sizes, and densities earlier recommended. These changes should be adopted as early as possible.

P.U.D.

Penfield's P.U.D. Ordinance must be considered separately. Penfield was the first Town in Monroe County to adopt a P.U.D. Ordinance. This step was taken at least partly as a result of the recommendations of the Penfield Housing Committee, Dr. Clarence Heininger, Chairman, in its report to the Town Supervisor dated January, 1970. One of the primary reasons for adopting a P.U.D. Ordinance was to permit the construction of moderate income housing.

Three P.U.D.s have been approved to date with a total of 1615 dwelling units. Regrettably these P.U.D.s will provide a very limited amount of low/moderate income housing. Based on present tentative plans, only 80 dwelling units are in this range.

These are units for the elderly in the Standco P.U.D. (See Appendix J on page 42 for current estimates of the types and values of the P.U.D. dwelling units).

The Housing Task Force was unable to reach agreement on a firm recommendation pertaining to the P.U.D. Ordinance. Some suggested recommendations were:

- Revise the P.U.D.Ordinance so as to conform to the Monroe County Planning Council's model P.U.D. Ordinance.

- Leave the present P.U.D. Ordinance as it is until we gain further experience with it.

- Have the Planning Board review the Ordinance and propose changes.

- Rescind the Ammendment to the P.U.D. Ordinance passed by the Town Board in the Fall of 1971, and thus return it to its original form.

Much of the discussion among Task Force members centered around the detailed space requirements as well as bulk and use specifications in Penfield's P.U.D. as contrasted to the Planning Council's "Model". The "Model", which is in the process of revision, recommends that no density specifications be stated in the Ordinance; instead, that each proposal shall be evaluated on its own merits.

The opinions of Task Force members divided generally as follows:

- without detailed requirements, the Planning and Town Boards will have no firm criteria against which to measure a P.U.D. proposal. This could result in unequal treatment of various proposals and in charges of unfairness or even litigation based on alleged unfairness.

VERSUS

- the intent of the P.U.D. concept is to promote maximum flexibility in the design of a development so as to best utilize the characteristics of a given piece of land. Imposition beforehand of rigid specifications defeats this intent.

EXHIBIT A

PRIVATE ENTERPRISE / GOVERNMENT ALTERNATIVES

Moderate income housing can be built and financed either through private enterprise or with various forms of government financial assistance. Both profit oriented private enterprise and non-profit organizations can construct moderate income housing under federal government subsidy programs.

PRIVATE ENTERPRISE

This Task Force expresses a preference for the construction of moderate income housing by private enterprise. Private builders in the Penfield area indicate they can build moderate income housing without government subsidies. The Linden East development is the first evidence of this in the Penfield area. In the past builders have preferred to construct "high income" housing. There are indications that a shift in demand is occurring and that the "high income" housing market may be approaching saturation.

In the past the only bonafide proposals for moderate income housing were based on government subsidized programs. It was felt that a combination of land costs, constructions costs, zoning requirements, interest rates and taxes made government subsidization necessary to provide housing for moderate income families. Since it is too soon to tell if private enterprise can and will provide the required moderate income housing, this Task Force recommends that the Town Board consider government subsidized proposals, while at the same time acknowledging a preference for private enterprise proposals.

EXHIBIT A

Government subsidized developments have one advantage over those constructed without subsidy: the residents can be limited to moderate income families. If the goal of constructing moderate income housing is to provide housing for moderate income families, then government subsidized housing guarantees this will occur.

On the other hand private enterprise will sell a moderate income dwelling unit to a person with a high income, if he wishes to purchase it. The experience at Linden East is that roughly 50% of the purchasers are high income families.

This Task Force accepts this as normal workings of the marketplace, but recognizes that it raises several points. First, it casts serious doubt on the belief that high income families prefer not to live near lower income families.* Second, it means that the construction of moderate income housing itself does not necessarily assist in solving the shortage of housing for moderate income families (if the housing is purchased by high income families). Third, it suggests that more moderate income housing will be required to meet the needs of high income persons desiring this housing as well as the needs of moderate income families.

*The opinion survey indicates that Penfield people are more concerned with the ability of other residents to pay their "fair share" of the cost of services than they are with their economic, educational and occupational background. (Questions 6 and 7).

FINANCING

In discussions with four local lending institutions we learned that several banks are presently granting a substantial percent of their mortgages to families in the moderate income range. Mortgage money is readily available. A 20% down-payment is required on conventional mortgages.

Stable employment and a low level of outstanding debts are key criteria in granting mortgages to moderate income families. Rules of thumb used to determine the amount of mortgage a family can carry are:

- The purchase price of the home should not exceed twice the annual salary.
- One week's gross salary or 23% of the gross monthly income should equal the monthly mortgage payment including principal, interest, taxes and insurance.

Mortgage officers generally were opposed to granting 35-year mortgages although these are permitted by New York State law. Some felt they probably would go along with the 35-year mortgage in the future. A longer mortgage results in a lower monthly payment and would permit more moderate income families to purchase homes.

Mortgage officers preferred Conventional mortgages to FHA mortgages. Delays in construction while waiting for FHA inspections and longer evaluation times before granting mortgages were key reasons given.

FEDERAL GOVERNMENT PROGRAMS

It is beyond the scope of this report to attempt to explain in detail the various federal government programs designed to assist moderate income families in obtaining housing. A brief description of two key programs, known as "Section 235" and "Section 236" of the Housing and Urban Development Act of 1968 are shown in Appendix K on page 43. A more detailed explanation of Section 235 requirements appear as Appendix L on page 44.

Neither 235, nor 236 requires tax abatement of local property taxes. Instead both provide interest subsidies. That is, the cost of housing, either rental or purchased, is lowered to the resident since the federal government pays a portion of the interest on the mortgage.

NEW YORK STATE PROGRAMS

All New York State programs for moderate or low income housing require tax abatement except for one category of housing for the elderly. These are authorized under the Mitchell Loma Act.

Urban Development Corporation (UDC) is a State agency and public benefit corporation created by the New York State Legislature in 1968 to develop and finance housing for low, moderate and middle-income families. UDC has announced plans for 350 rental dwelling units of townhouse and garden apartment design to be constructed in a development off Penfield Road and Nine Mile Point Road.

EXHIBIT A

Any Town in New York State may ask the State Legislature to establish a Town Housing Authority. The function of a housing authority is to act as a conduit for federal housing funds for low income families. The Authority owns and operates the property. This Task Force does not recommend that the Town of Penfield establish a Housing Authority as it is not needed to enable the construction of moderate income housing.